UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/1997/1
25 June 1997

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS)

CONTENTS

	Paragraphs	Page
Introduction	1 - 3	2
I. PROCESSING APPROACH AND SCOPE OF WORK	4 - 6	3
II. PROCESSING METHODOLOGIES AND RESULTS	7 - 16	4
A. Statistical sampling methodologies	9 - 13	4
1. Additional C1-MPA claims	10 - 11	5
2. Additional C4-MV claims	12 - 13	5
B. Statistical modelling methodologies	14 - 16	6
1. Additional C6-Salary claims	15	6
2. Outlier review:C1-Money and C4-CPHO claims	16	7
III. CLAIMS INCLUDED IN THE FIFTH INSTALMENT	17 - 18	7
IV. RECOMMENDATIONS	19 - 25	8
Corrections to award amounts	20 - 22	10
Notes		13

GE.97-62139

INTRODUCTION

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure [1] (the "Rules"). These recommendations concern the fifth instalment comprising 76,751 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel has reviewed the fifth instalment of category "C" claims in a continuum with the Panel's processing of the first four instalments of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its annexes [2] (the "First Report"), the Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its addendum [3] (the "Second Report"), the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) [4] (the "Third Report"), and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" [5] (the "Fourth Report") which have been approved by the Governing Council. [6] The fifth instalment has been processed on the basis of the considerations, precedents and determinations expressed in the First through Fourth Reports, which the present report incorporates by reference.

3. This report reflects the work performed by the Panel since it issued its recommendations on the fourth instalment of category "C" claims. The Panel met with the Commission's secretariat at the secretariat's headquarters in Geneva on 12-13 February, 10 April and

15 May 1997. The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the fifth instalment.

I. PROCESSING APPROACH AND SCOPE OF WORK

4. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council Decisions, the Rules, and other relevant principles and practices of international law. In addition to the information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of the fifth instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; and relevant United Nations and other reports.

5. In terms of defining the Panel's mandate, the Governing Council's Decision 1 has particular relevance. [7] In this Decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, Decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted." [8] Consistent with this Decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts.

6. The First and Second Reports provide an extensive discussion of the considerations and preparations underlying the processing methodologies applied to the category "C" claims. [9] In view of the Panel's mandate, and in keeping with the "fast-track" processing

approach applied to the second, third and fourth instalments of claims, the application of statistical sampling and modelling techniques continues to form the basis for the fifth instalment of category "C" claims. [10] The Panel notes that, as explained in the Second through Fourth Reports, claims not meeting the fast-track processing criteria also require expedited processing and will be included in future instalments. However, given the large number of claims received in category "C", the Panel has determined that those claims that can be processed efficiently through fast-track processing methodologies will be addressed first.

II. PROCESSING METHODOLOGIES AND RESULTS

7. The completion of the data entry of claims information for approximately 165,000 category "C" claims from submitting governments and international organizations, as described in the Second Report, [11] has made additional claims available for processing by means of the fast-track processing methodologies. Thus, claims presenting losses that lend themselves to processing by the fast-track approach have been included in the fifth instalment. [12]

8. In addition to identifying claims meeting the fast-track processing criteria described in the First and Second Reports, the Panel has developed and finalized additional fast-track processing methodologies during its working sessions through May 1997, and has applied these methodologies to the fifth instalment of category "C" claims as described below.

A. Statistical sampling methodologies

9. The First Report describes the Panel's use of sampling in the context of the first instalment of category "C" claims. [13] The Second Report describes the Panel's use of sampling to resolve certain losses claimed on the "C1" page of the claim form for mental pain and anguish ("C1-MPA" claims). [14]

1. Additional C1-MPA claims

10. In its selection of additional fast-track categories of losses claimed for mental pain and anguish on the "C1" page of the claim form ("C1-MPA" claims), the Panel utilized the same considerations as it had for selecting claims for the second instalment. [15] Thus, Kuwaiti nationals claiming for mental pain and anguish for hostage-taking or illegal detention for more than three days comprised a large homogeneous group of claimants who were expected to share evidentiary and other relevant characteristics. The Panel determined, on the basis of the sample claims reviewed, [16] that Kuwaiti nationals claiming for C1-MPA for hostage-taking or illegal detention for more than three days had satisfied the applicable C1-MPA criteria established in the First Report. [17] It also confirmed that the number of days stated on the claim form was reliable for purposes of determining the recommended amounts. [18]

11. Based on the sampling results, [19] which confirm the Panel's findings with respect to C1-MPA claims in the first and second instalments, the Panel concludes that those Kuwaiti nationals with claims for hostage taking or illegal detention for more than three days should be compensated for their C1-MPA losses. The Panel further finds that such compensation is to be based on the number of days stated on the claim form, to be calculated by application of the formulas set out by Decision 8 of the Governing Council. [20]

2. Additional C4-MV claims

12. The Panel considered results from a motor vehicle sampling project that also fulfilled the sampling considerations specified for C1-MPA claims to select additional fast-track losses. [21] The criteria and methodology for losses claimed on the "C4" page of the claim form for "total loss" or "stolen" motor vehicles ("C4-MV") were established by the Panel in the First and Second Reports, [22] including the use of the applicable value from the Motor Vehicle Valuation Table ("MVV Table"). [23] In the case of Kuwaiti nationals, all claims were submitted in both electronic and paper format. The

Government of Kuwait entered the value of the vehicle from the MVV Table directly into the electronic format as the amount of loss claimed. The sampling exercise was undertaken to confirm whether the amounts claimed indeed conformed to the MVV Table amounts.

13. In 100 per cent of the claims included in the sampling project, the Panel's criteria for proof of ownership, proof of loss and causal relationship to the invasion were met. [24] The Panel further determined that, based on the sample results, the amount of loss claimed on the electronic claim by Kuwaiti nationals was the equivalent of the MVV Table value for the claimed vehicle. [25] Thus, the Panel determined for such claims that the recommended amount of compensation should be the lower of the amount of loss claimed for the motor vehicle on the "C4" page of the claim form or the original cost of the vehicle as stated on the "C4" page of the claim form. [26]

B. Statistical modelling methodologies

14. As in the Second Report, the considerations that led the Panel to adopt supplementary methods of assessing the value of claimants' losses remain valid. For certain loss types, the claims by themselves do not provide a sufficiently clear or consistent valuation basis and the vast numbers, immense diversity and "expedited" nature of category "C" claims do not permit an individualized approach. [27] Statistical tools such as regression analysis provide a level of objectivity and consistency while taking into account individual characteristics relevant to the determination of compensation awards. [28]

1. Additional C6-Salary claims

15. The First and Second Reports detail the Panel's valuation methodology for claims for wage and salary losses on the "C6" page of the claim form ("C6-Salary" claims). [29] Application of the methodology is based on the identification of the claimant's pre-invasion monthly salary. Of the approximately 92,500 category "C" claims submitted by the Government of Egypt in electronic format,

along with the paper counterparts, approximately 16,000 claims contained C6-Salary losses but provided no pre-invasion monthly salary in the electronic claim. For the fifth instalment, after conducting a thorough individual review of the evidentiary support in a random sample of the paper claims, the Panel approved the use of a statistical regression model to supply the pre-invasion monthly salary for such claims. [30] The Panel further determined that such claims having high monthly salaries, or high or low C6-Salary total amounts claimed, should be individually reviewed for data error.

2. Outlier review: C1-Money and C4-CPHO claims

16. Outliers are those claims that do not resemble similarly-situated claims. Outliers have been excluded from the modelling data-sets [31] for transportation, food, lodging, relocation and other related losses claimed on the "C1" page ("C1-Money" claims) and losses for clothing, personal effects, household furnishings and other personal-property-related losses claimed on the "C4" page ("C4-CPHO" losses). Outliers have also been individually reviewed for data error. Further, in claims where compensation amounts ascertained by application of the C1-Money and C4-CPHO statistical regression models in the second, third and fourth instalments were less than 35 percent of the amounts claimed for, those losses were also reviewed individually for data errors. [32] Where found, data errors were corrected. To the extent that such claims do not otherwise present any special problems, they have now been included in the fifth instalment.

III. CLAIMS INCLUDED IN THE FIFTH INSTALMENT

17. As in the second, third and fourth instalments, the category "C" claims included in the fifth instalment represent the losses most frequently suffered by category "C" claimants. They include C1-Money claims; C4-CPHO claims; [33] C4-MV claims; [34] losses claimed on the "C5" page related to bank accounts located in Kuwait; [35] and C6-Salary claims. [36] Also included in this instalment are C1-MPA losses claimed by Kuwaiti or OECD nationals related to forced

hiding, hostage taking or illegal detention for more than three days[37] and claims submitted by the Government of Egypt on the "C6" page for mental pain and anguish related to the deprivation of all economic resources ("C6-MPA" claims).[38]

18. During the processing of the fifth, as in respect of previous instalments, the secretariat applied a special computer program to perform cross-checks on combinations of available identifying information in order to exclude as much as possible cross-category multiple recovery between category "A" (departure) claims and claims for departure losses submitted on the "C1" page of the category "C" claim form. As with the fourth instalment, in accordance with the Governing Council's decision on adjustment of compensation for multi-category departure claims,[39] after confirming that claimants who filed individual or family claims for departure losses in category "A" had also filed claims for departure losses in category "C", the secretariat has reduced the "C1-Money" departure claims pursuant to Decision 24 of the Governing Council.[40] This fifth instalment reports the adjusted recommended award amounts for such claims.

IV. RECOMMENDATIONS

19. The Panel hereby presents the amounts recommended as compensation for 76,720 claims in the fifth instalment of category "C" claims. Totalling US$720,924,558.14, these recommended compensation amounts are listed in the summary table below for each Government and international organization included in the fifth instalment. Each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. The amounts recommended for compensation in the fifth instalment resolve all of the loss elements presented in these claims. Thirty-one claims in the fifth instalment of category "C" claims are not recommended for payment. The claims not recommended for payment relate exclusively to the following: C1-Money losses where recommended amounts are equal to or lower than the amounts previously approved by the

Governing Council for the same claimants in category "A"; [41] C5 bank account losses in Kuwait; and C6-MPA losses for Egypt. [42]

Summary of Fifth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	2	--	27,036.50
Australia	4	--	114,460.74
Austria	1	--	20,789.17
Bahrain	4	--	75,675.21
Bangladesh	1,441	1	9,772,278.32
Cameroon	1	--	1,714.98
Canada	39	--	974,360.88
Chad	1	--	4,616.79
Croatia	2	--	36,847.76
Czech Republic	6	--	134,365.26
Egypt	13,274	--	85,050,545.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	1	--	840.07
France	6	--	173,929.82
Germany	7	--	168,194.58
Greece	2	--	67,924.84
Hungary	3	--	60,841.05
India	9,753	3	65,200,543.03
Iran	23	--	468,658.75
Ireland	4	--	84,478.70
Italy	3	--	85,401.04
Japan	1	--	15,904.82
Jordan	9,988	18	92,708,375.12
Korea, Republic of	6	--	123,601.31
Kuwait	25,487	--	324,811,289.59
Lebanon	65	--	2,266,094.07

Summary of Fifth Instalment Recommendations			
Mauritius	2	--	33,607.27
Morocco	5	--	59,554.30
Netherlands	3	--	57,180.05
New Zealand	1	--	39,669.72
Pakistan	668	--	7,577,923.64
Philippines	2,093	4	7,733,835.78
Poland	3	--	31,433.14
Somalia	6	--	112,873.60
Sri Lanka	1,525	4	2,220,398.86
Sudan	1,984	--	15,548,269.29
Sweden	2	--	34,874.88
Syria	10,062	1	99,451,240.61
Thailand	4	--	60,134.54
Tunisia	16	--	204,829.96
Turkey	10	--	223,531.45
United Kingdom	91	--	2,169,078.28
United States of America	73	--	2,018,256.74
Yemen	33	--	562,016.48
UNDP Jerusalem	3	--	82,928.25
UNDP Washington	6	--	148,196.89
UNHCR Canada	2	--	52,787.08
UNHCR Geneva	2	--	27,176.47
UNRWA Vienna	2	--	25,993.46
Total	76,720	31	720,924,558.14

20. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, [43] the Panel, on the initiative of the Executive Secretary, recommends approval of corrected recommended amounts for the following claims.

21. The Panel recommends approval of corrected recommended amounts for three claims from the first instalment. [44] A confidential listing

containing a revised breakdown of amounts in respect of individual claimants will be provided to the countries affected. The concurrent recommended changes per country are listed below:

FIRST INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
United Kingdom	5,322,359	5,310,759
Pakistan	17,787,653	17,763,696

22. Further, the Panel recommends approval of corrected recommended amounts for three claims from the second instalment. [45] Also in the Second Report, 50 claims were inadvertently attributed to an entity that did not submit them to the Commission. [46] A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to all Governments and submitting entities affected. The concurrent recommended changes per country are listed below:

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Canada	3,879,863.25	3,858,309.58
Lebanon	26,143,122.53	26,123,043.04
UNDP Jerusalem	1,361,377.06	620,982.03
UNRWA Vienna	0	740,395.05

23. The Panel is satisfied that the secretariat has used reasonable and practical means to detect the existence of duplicate claims. [47] However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by all Governments and international organizations receiving lists of individual claimants in order to prevent instances of overpayment to their claimants.

24. With reference to the considerations on the subject of interest expressed in the First Report, [48] the Panel recommends that interest be awarded on the claims included in this fifth instalment of category "C" claims as of 2 August 1990. [49]

25. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 15 May 1997

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

NOTES

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ S/AC.26/1996/1 and S/AC.26/1996/1/Add.1/Rev.1.

4/ S/AC.26/1996/2.

5/ S/AC.26/1996/4.

6/ S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996) and S/AC.26/Dec.39 (1996).

7/ S/AC.26/1991/1.

8/ Idem.

9/ See First Report, pp. 49-208 and Second Report, paras. 24-51.

10/ The "fast-track" processing approach is described in detail in the Second Report. See, in particular, paragraphs 8 through 14.

11/ See Second Report, para. 18.

12/ As previously stated, there are many difficulties inherent in processing category "C" claims that derive from the condition, presentation and quality of the claims provided. See Second Report, paras. 19-23.

13/ See First Report, pp. 39-47. For a more detailed description of relevant precedents and sampling techniques, see "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", S/AC.26/1995/4 (the "Fourth Category 'A' Report"). More than 500,000 category "A" claims were processed on the basis of sampling.

14/ See Second Report, paras. 25-32. These losses included claims by Kuwaiti nationals for forced hiding and claims by nationals of member countries of the Organization for Economic Cooperation and Development (OECD) for forced hiding, hostage taking or illegal detention for more than three days.

15/ See Second Report, para. 30, for considerations leading to the Panel's selection of C1-MPA claims.

16/ More than 99 percent of claimants were able either to provide information from their government confirming that they were held hostage or illegally detained or to establish specific circumstances or events relevant to their detention or hostage-taking so as to ascertain the location where they were taken hostage or illegally detained, the date of their capture or arrest, the specific identity of their captors or the date they were released from captivity

17/ The Panel's processing considerations for C1-MPA claims and the substantive criteria applied to verify and compensate such claims are set forth in the First Report, pp. 82-96. As a threshold requirement relevant to all category "C" loss types, the Panel verified in the first instalment whether claimants were resident in Iraq or Kuwait at the time of the invasion. First Report, pp. 52-53 and 90. In the current sampling population, as in previous C1-MPA sampling projects approved by the Panel, over 99 percent of claimants provided evidence to support the fact of their residence in Iraq or Kuwait.

18/ In general, claimants in the sample slightly understated the number of days supported by the evidence attached to their claim forms.

19/ See supra at note 18.

20/ S/AC.26/1992/8.

21/ See supra at para. 10 and Second Report, para. 30. While the cited sections refer specifically to the selection of candidates for C1-MPA sampling projects, the considerations are generally applicable to the selection of candidates for any sampling.

22/ For considerations and criteria applicable to C4-MV claimants in general, see First Report, pp. 148-158. For criteria specifically applicable to non-Kuwaiti C4-MV claimants, see Second Report, paras. 40-41.

23/ The MVV Table provides standard market values indexed by make, model and year, for motor vehicles in Kuwait for the years 1980 to 1990. After carefully reviewing the MVV Table and its preparation and considering alternative sources of automobile valuation information, the Panel adopted the MVV Table as the basis for a comparison of the amounts claimed with the value indicated for the underlying vehicle. First Report, pp. 156-157.

24/ For elaboration of all relevant criteria, see First Report, pp. 59-81, 148-158.

25/ In the sample, the amount claimed was generally slightly less than the MVV Table value for the underlying vehicle.

26/ See also Second Report, para. 41.

27/ See First Report, p. 143; Second Report, paras. 20-21.

28/ See Second Report, paras. 34-38.

29/ This methodology takes into account a number of factors, including relevant Iraqi and Kuwaiti legislation, an expert study of entitlements payable upon termination of employment, the number and characteristics of the claims included in the first instalment, the number of claims expected in other instalments, and the evidence submitted in support of the claims. First Report, pp. 168-194. In the Second Report, the compensation cap was modified to the lesser of the amount claimed or the application of a multiplier of seven to a claimant's pre-invasion monthly salary. Second Report, paras. 44-51.

30/ Analysis of the random sample determined that in more than 96 percent of the cases, the prior monthly salary was either clearly stated on the claim form or found in the attachments provided by the claimant. The modelling data set included only claims that had been individually reviewed

with verified pre-invasion salary figures. The model included several variables: gender, marital status, year of birth, place of departure, amount claimed for C6-Salary, amount claimed for C4-CPHO, number of motor vehicles, and fact of claiming for household effects. The model was checked by comparing results to actual salaries in the sample. In nearly all cases, the results generated by the model approximated the verified pre-invasion salaries that were not included in the electronic format.

31/ Outliers are excluded from modeling data-sets pursuant to standard statistical practice. Retherford, Robert D. and Minja Kim Choe, Statistical Models for Causal Analysis , (John Wiley and Sons, Inc. 1993), pp. 20-21. See also "Technical Description of Statistical Modeling," Annex I, para. 8, Addendum (S/AC.26/1993/R.3/Add.1/Rev.1), Second Report.

32/ This review included more than 6,400 non-Kuwaiti and non-Egyptian claims. Kuwaiti and Egyptian claims, where the total compensation amounts arrived at by application of the models were less than 35 percent of the total amounts claimed for C1-Money and C4-CPHO losses, will be reviewed at a later phase and are therefore not included in the fifth instalment.

33/ See the discussion in the Second Report on the statistical modeling methodologies used in resolving C1-Money and C4-CPHO claims, at paras. 33-39.

34/ See the discussion in the Second Report on the C4-MV methodology, at paras. 40-41.

35/ See the discussion of "C5" bank accounts located in Kuwait in the Second Report, at paras. 42-43.

36/ See the discussion of the C6-Salary methodology in the First Report at pp. 168-194 and the Panel's review and analysis in the Second Report, at paras. 44-51.

37/ See discussion of C1-MPA claims in the First Report, particularly with respect to the categories of persons considered to have been forced to hide on account of a "manifestly well-founded fear" for their lives or of being taken hostage or illegally detained, pp. 92-96 and Second Report, paras. 25-32.

38/ See Second Report, note 48.

39/ S/AC.26/Dec.24 (1994). See also S/AC.26/Dec.21 (1994) and S/AC.26/Dec.17 (1994).

40/ Pursuant to Governing Council decision 24 [S/AC.26/Dec.24 (1994)], any claimant who has filed an individual claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated in category "C" only insofar as the amount of such losses is determined to exceed US$2,500. Any claimant who has filed a family claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated only insofar as the amount of such losses is determined to exceed US$5,000.

41/ As a result of the application of Governing Council decision 24 [S/AC.26/Dec.24 (1994)] to these claims, the amount calculated under category "C" has been entirely offset by the category "A" awards and, therefore, no amount of compensation is recommended for these category "C" claims.

42/ In connection with the rejection of these claims, the Panel notes in particular that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p. 194, Second Report, note 48, Third Report, note 15, and Fourth Report, note 25.

43/ See discussion supra at para. 13.

44/ In December 1996, the Governing Council accepted the Panel's recommendation that corrections be made to seven claims from the first instalment. S/AC.26/Dec. 39 (1996) and Fourth Report, para. 12.

45/ In December 1996, the Governing Council accepted the Panel's recommendation that pursuant to Decision 24, in the case of 42 confirmed matches of category "A" claims and category "C1" departure claims from the second instalment, appropriate deductions be made from the compensation awarded to the category "C" claimants. Ibid., at para. 13.

46/ Until November 1996, all claims submitted by UNRWA Vienna were listed under the same country code as UNDP Jerusalem (UNDP/UNRWA). Thus, fifty claims from UNRWA Vienna were attributed in the second instalment to UNDP Jerusalem.

47/ Indeed, some corrections noted in paragraphs 21 and 22 supra were required because of the subsequent discovery of duplicates.

48/ First Report, pp. 32-33.

49/ See also S/AC.26/1992/16.

UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/1997/2
26 June 1997

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

FIRST REPORT OF THE EXECUTIVE SECRETARY PURSUANT TO ARTICLE 41 OF THE PROVISIONAL RULES FOR CLAIMS PROCEDURE

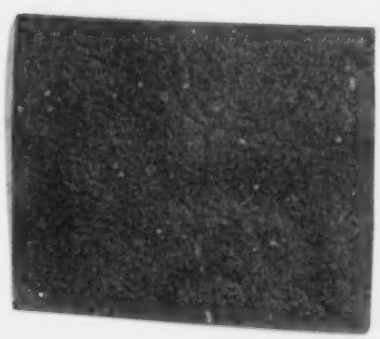
(Category "A" Claims)

1. Article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) ("the Rules"), provides the following:

1) Computational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council.

2) The Governing Council will decide whether any action is necessary. If it is determined that a correction must be made, the Governing Council will direct the Executive Secretary as to the proper method of correction.

2. In the past, recommended corrections to approved claim awards were reported to the Governing Council by the Commissioner Panels in their subsequent reports and recommendations. However, the Panel for category "A" claims has concluded its review of all of the claims in that category and is no longer functioning. Therefore, the Executive Secretary is reporting requests for corrections to category "A" claims directly to the Governing Council.



3. The Executive Secretary recommends the correction of the previously approved category "A" claim amounts for the following countries:

a. Bangladesh

One family claim in the sixth instalment was incorrectly awarded the amount of US$4,000. The recommended revised award amount for this claim is US$8,000.

b. Jordan

Two claims reported in the second instalment were found to be duplicates of claims also reported in the same instalment. It is recommended that no compensation be awarded for the two duplicate claims.

c. Kuwait

One family claim in the sixth instalment was incorrectly awarded the amount of US$5,000. The recommended revised award amount for this claim is US$8,000.

d. Sudan

One claim originally reported in the fourth instalment was found to be a duplicate of a claim also reported in the same instalment. Pursuant to the conclusions reached by the Governing Council on 21 January 1997, both of these claims were moved to the second instalment for the purpose of payment. It is recommended that no compensation be awarded for the duplicate claim.

e. Sweden

One claim in the sixth instalment was erroneously reported as not eligible for compensation. The recommended revised award amount for this claim is US$2,500.

f. United Kingdom

- One family claim in the sixth instalment was erroneously awarded US$4,000. The recommended revised award amount is US$5,000.
- One claim in the sixth instalment was found to be a duplicate of a claim awarded compensation in the fifth instalment. It is recommended that no compensation be awarded for the duplicate claim in the sixth instalment.
- One claim in the sixth instalment was erroneously reported as not eligible for compensation. The recommended revised award amount for this claim is US$2,500.

- One family claim in the sixth instalment was erroneously awarded US$2,500. The revised recommended award amount is US$5,000.

4. The Executive Secretary's recommended corrections per country are listed below:

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Jordan	96,437,000.00	96,425,000.00
Sudan	14,468,500.00 [1]	14,464,500.00

SIXTH INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	66,178,000.00	66,182,000.00
Kuwait	17,170,000.00	17,173,000.00
Sweden	-	2,500.00
United Kingdom	348,500.00	349,500.00

---

[1] This amount includes claims moved forward by the Governing Council from the fourth instalment to the second instalment for purposes of payment.

UNITED NATIONS

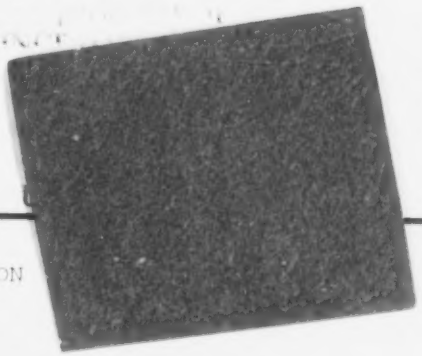
S

Security Council

Distr.
GENERAL

S/AC.26/1997/3
2 October 1997

Original: ENGLISH



UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

FINAL REPORT AND RECOMMENDATIONS OF THE PANEL OF COMMISSIONERS CONCERNING THE EGYPTIAN WORKERS' CLAIMS

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	2
I. PROCEDURAL HISTORY	3 - 20	2
II. ISSUES IN THE MERITS PHASE	21 - 33	5
A. Value of the Claims in the Merits Phase	21 - 31	5
1. Egypt's Views	23 - 28	5
2. Iraq's Views	29 - 31	6
B. Other Issues	32 - 33	7
III. THE PANEL'S DETERMINATIONS	34 - 62	7
A. Value of the Claims in the Merits Phase	34 - 54	7
1. Basis for the Panel's Determinations	37 - 47	8
2. Verification of the Claims	48 - 54	10
B. Other Issues	55 - 57	12
C. Interest	58 - 62	13
IV. RECOMMENDATIONS	63 - 66	14

Note

The Report and Recommendations of the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase) is contained in document S/AC.26/1995/R.20 Rev.1. of 12 October 1995.

GE.97-64662

Introduction

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission ("the UNCC" or "the Commission") by the Panel of Commissioners appointed to review the Egyptian Workers' Claims ("the Panel"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure ("the Rules"). Included in this report are the final conclusions of the Panel following its review in the merits phase of the Egyptian Workers' Claims. The Panel's report on the jurisdictional phase has previously been submitted to the Governing Council. 1/

2. The Egyptian Workers' Claims comprise approximately 1.24 million claims for about US$491 million, being the dollar value of funds deposited by Egyptian workers into banks in the Republic of Iraq ("Iraq") for transfer to beneficiaries in the Arab Republic of Egypt ("Egypt"), in accordance with agreements between Egypt and Iraq. The transfer of these funds ceased following the invasion of Kuwait by Iraq on 2 August 1990.

I. PROCEDURAL HISTORY

3. Due to the unique volume and characteristics of the claims, the secretariat of the Commission (the "secretariat") and the Government of Egypt entered into a "Memorandum of Understanding Concerning the Filing with the United Nations Compensation Commission of Claims Regarding the Remittances of Egyptian Workers in Iraq" ("the MOU"), on 17 June 1993.

4. The MOU provided for a two-stage procedure for processing the Egyptian Workers' Claims: a jurisdictional phase during which the Panel would determine to what extent the Commission has jurisdiction over the claims; and a merits phase during which the Panel would determine the entitlements of those claims found to be within the jurisdiction of the Commission.

5. On 27 December 1993, Egypt filed with the Commission a consolidated category "C" claim for US$491,098,538 plus interest at a rate of five per cent per annum, accruing from 2 August 1990. The claim was put forward for the non-transferred remittances of Egyptian workers in Iraq.

6. After the appointment of this Panel, and following the reporting of the factual and legal issues raised by the Egyptian Workers' Claims in the Eighth Report of the Executive Secretary to the Governing Council Pursuant

---

1/ Report and Recommendations of the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase) [S/AC.26/1995/R.20/Rev.1], hereinafter referred to as the report on the jurisdictional phase.

to Article 16 of the Rules, the Panel commenced its work on the jurisdictional phase on 10 January 1995.

7. In the course of the Panel's work on the jurisdictional phase of the review of the Egyptian Workers' Claims, both Egypt and Iraq filed briefs and documents containing their views, and responded in writing to specific questions raised by the Panel. The submissions filed by Egypt and Iraq were, as directed by the Panel, transmitted by the secretariat to both Governments. The Panel thereafter conducted an Oral Hearing. 2/

8. During its session from 4 to 7 July 1995, the Panel finalized its report on the jurisdictional phase in which the Panel determined that only those claims relating to deposits made on or after 2 July 1990 were within the jurisdiction of the Commission.

9. On 11 October 1995, the Governing Council, at its eighteenth session, received the Panel's report on the jurisdictional phase and, pending receipt of the Panel's final report, invited the Executive Secretary to provide copies of the report on the jurisdictional phase to Egypt and Iraq. That report was accordingly transmitted to both Governments on 12 October 1995.

10. Pursuant to the Panel's report on the jurisdictional phase, Egypt was required to file, within four months of receipt of the report, documentary evidence with respect to those claims determined by the Panel to be within the Commission's jurisdiction. The report also invited Iraq to submit its views and comments on such evidence and information filed by Egypt.

11. Egypt, in its letter of 27 November 1995, asked the Commissioners to request Iraq to provide an explanation of the basis of its response to the Panel's questions, in which Iraq stated that the total dollar value of payment orders issued after 2 August 1990 was US$118,102,263.67. The secretariat forwarded a copy of this request to Iraq but received no response.

12. On 8 December 1995, Egypt sent a request to the Executive Secretary, pursuant to article 41, paragraph 1, of the Rules, for the correction of computational errors that it stated were contained in the Panel's report on the jurisdictional phase.

13. On 27 December 1995, Egypt, pursuant to the Panel's report on the jurisdictional phase, filed copies of payment orders received by the Bank

---

2/ The procedural history of the jurisdictional phase of the proceedings is set out in detail in paragraphs 5 to 37 of the Panel's report on the jurisdictional phase.

of Alexandria in Egypt from the Rafidain and Rashid Banks in Iraq in respect of deposits made after 2 July 1990.

14. Further, on 5 February 1996, Egypt filed copies of payment orders received by the Arab African International Bank (AAIB), and the Cairo branch of the Rafidain Bank, from the Rafidain and Rashid Banks in Iraq in respect of deposits made after 2 July 1990. In a letter dated 31 January 1996 accompanying its submissions, Egypt repeated its request that Iraq provide an explanation as to the basis of Iraq's calculation of the value of payment orders issued after 2 August 1990. The secretariat also transmitted a copy of this letter to Iraq but received no response on the request.

15. The submissions by Egypt did not include, as required in paragraph 232 of the Panel's report on the jurisdictional phase, a list containing "the names of all of the claimants and the amount claimed for each claimant as well as the name of each beneficiary entitled to the amount where the claimant is not the beneficiary" and "with respect to each amount claimed, the date on which the corresponding dinar deposit was made". The secretariat requested such a list from Egypt on 14 February 1996.

16. While awaiting receipt of the requested list from Egypt, the secretariat, on 12 March 1996, transmitted a set of the documents filed by Egypt on 27 December 1995 and 5 February 1996 to Iraq.

17. Egypt filed the requested list of claimants in computer diskette format on 12 June 1996. Copies of the 42 diskettes received were transmitted to Iraq by the secretariat on 21 June 1996.

18. On 28 August 1996, Iraq sent its initial observations on the information contained in Egypt's computer diskettes to the secretariat. Iraq complained of errors in the lists and difficulties in accessing information on some of the diskettes. Iraq also asserted that the data provided was incomplete. The secretariat, in its response of 4 September 1996, requested Iraq to specify those diskettes with which it was encountering difficulties. However, following the receipt of the secretariat's inquiry, Iraq has not pursued the issue any further.

19. On 15 and 27 November 1996, Iraq filed, in Arabic and in English, respectively, its views and comments on the Panel's report on the jurisdictional phase and on the submissions of Egypt. Annexed to Iraq's submission were eight sets of lists containing the names of claimants who Iraq argued, for various reasons, should not be compensated by the Commission.

20. The Panel held one consultative and two working sessions with the Commission's secretariat at the secretariat's headquarters in Geneva to consider the merits of the workers' claims. Members of the secretariat

attended the meetings and sessions and provided support to the Panel. Between its formal sessions in Geneva, the Panel continued its work and maintained continuous contact among its members and with the secretariat.

II. ISSUES IN THE MERITS PHASE

A. Value of the Claims in the Merits Phase

21. As determined by the Panel in its report on the jurisdictional phase, the total value of the claims in the merits phase consists of the value of those claims that relate to funds deposited by the Egyptian workers into the Iraqi banks from 2 July 1990 for transfer in US dollars to Egypt.

22. For the period from 2 July 1990, Egypt was able to provide copies of payment orders that were issued for deposits in the sum of US$84,751,554, while Iraq, in its review of the submissions filed by Egypt following the Panel's report on the jurisdictional phase, asserted that the value of deposits during the same period was US$84,276,943.

1. Egypt's Views

23. Egypt contends that a substantially higher dollar value is indicated by the payment orders issued by the Iraqi banks than is indicated by the payment orders actually received by the Egyptian banks. According to Egypt, there were payment orders which, although issued and dispatched to Egypt, were not received by the banks in Egypt.

24. Egypt's assertion is based mainly on the different responses given by the two parties to question 8 annexed to the Panel's Procedural Order No.1. Question 8 reads as follows:

> "It is stated that 'the payment orders possessed by the Egyptian banks preliminarily demonstrate that the total amount of the Egyptian workers' money currently held by Iraq is US$491,098,538.00' (Statement of Claim, p. 17):
>
> a) When were the deposits amounting to the above stated sum made with the Iraqi banks? How much of that amount had been transferred to New York and when was this done? When would the above amount have been paid to the Egyptian beneficiaries if the transfers had not ceased? ...
>
> e) How much of the non transferred funds were deposited by the Egyptian workers after 2 August 1990?".

25. In its response, Egypt stated, in part, that

> "[o]f the $491,098,538.00 held by Iraq, approximately $414 million was handed in to the Iraqi banks prior to August 2, 1990. Approximately $77 million was handed in to the banks after August 2, 1990".

26. Iraq's response, to the question was that

> "[i]n summary the total operation of Rafidain and Rashid Banks with the Egyptian Banks is :- $118 102 263/67 payment orders after 2.8.90 subject to joint review by the Iraqi and Egyptian Banks."

Further, Iraq provided a breakdown, by date, of the value of the payment orders issued by the Rafidain and Rashid Banks relating to the funds deposited by Egyptian workers for transfer.

27. In addition to the responses of the parties to question 8, Egypt argues that the missing payment orders were not received by the Egyptian banks as there was a significant disruption of postal services or other communications within Iraq and between Iraq and Egypt subsequent to 2 August 1990. Further, Egypt states that the Cairo branch of the Rafidain Bank received payment orders after 2 July 1990 with a total value of less than half of the total value of payment orders received by the Bank of Alexandria and considerably less than the total value of payment orders received by the AAIB. This, Egypt points out, is contrary to the terms of the agreement between Egypt and Iraq whereby 20 per cent of the workers' remittances should have been sent to the AAIB, and 40 per cent each to the Cairo branch of the Rafidain Bank and the Bank of Alexandria.

28. Consequently, Egypt has requested the Panel to ask Iraq to explain the basis of its calculation of the sum of US$118,102,263.67. In addition, Egypt suggests that the Panel may wish to request Iraq to submit the actual payment orders upon which Iraq's calculation is based.

2. Iraq's Views

29. Iraq, on checking Egypt's submissions of payment orders and lists of claimants against its own records, implies that it is only liable for 184,038 claims for US$71,050,830, representing deposits made from 2 August 1990 to 5 April 1991. However, out of Egypt's submissions of payment orders for 224,602 claims with a total value of US$84,751,554, including deposits made between 2 July 1990 and 2 August 1990 and after 5 April 1991, Iraq raises issue with 31,708 claims for the sum of US$13,849,454.

30. In its views and comments on Egypt's submissions that followed the report of the Panel on the jurisdictional phase, Iraq stated that the lists of claimants filed by Egypt include: the names of 905 persons, claiming a total of US$382,453, for whom no payment orders have been filed and whose names do not exist in the records held by Iraq; the names of 181 persons who have submitted claims with a total value of US$102,015 each exceeding the amounts contained in their respective payment orders; and the names of 181 persons whose claims totalling US$138,873 are duplicated.

31. Further, Iraq asserted, on jurisdictional grounds, that it is not liable for 30,033 claims for US$13,029,405 representing deposits made between 2 July and 2 August 1990. Iraq also argued that it is not responsible for deposits made after 5 April 1991. This, Iraq contends, is because the Government of Iraq, on 6 April 1991, issued instructions to all banks in the country to stop all foreign exchange transfers and to not issue any payment orders from 5 April 1991. The instructions were not received by all of the branches of the banks involved in the transfer of the Egyptian workers' funds due to the breakdown of communication systems during the Gulf War. Consequently, according to Iraq, payment orders were issued for 408 deposits valued at US$196,708 after 5 April 1991.

B. Other Issues

32. The Panel has taken note of Egypt's request for the correction of alleged computational errors in the Panel's report on the jurisdictional phase. The request, in effect, suggests the adoption of a different method of calculating the expectation period for the transfer of the workers' funds, which would result in deposits made prior to 2 July 1990 being included in the Commission's jurisdiction.

33. The Panel also notes a request contained in Iraq's submissions that the claims of the workers be resubmitted to the Commission on separate, individual category "C" claim forms.

III. THE PANEL'S DETERMINATIONS

A. Value of the Claims in the Merits Phase

34. In its consideration of the Commission's jurisdiction over the workers' claims, the Panel concluded that only those claims relating to deposits made on or after 2 July 1990 were within the jurisdiction of the Commission. The main task before the Panel in the merits phase is, therefore, to determine the value of the claims relating to deposits made on or after 2 July 1990.

35. As stated above, Egypt, while only able to provide payment orders for deposits made from 2 July 1990 in the sum of US$84,751,554, insists that other payment orders were issued that were not received by the banks in Egypt and requests the Panel to make an inquiry to Iraq as to the existence of such payment orders.

36. The Panel is mindful of Iraq's statement in the jurisdictional phase that the value of payment orders issued after 2 August 1990 is US$118,102,262.67. The precision and detail in which the figure was provided would suggest that it was arrived at on the basis of documents available to Iraq. At the same time, the Panel notes that Iraq had stated that the amount provided was "subject to joint review by the Iraqi and

Egyptian Banks". In the merits phase, Iraq has not referred to the amount of US$118,102,262.67, but would appear to have limited its verification effort to the amount put forward by Egypt.

1. Basis for the Panel's Determinations

37. The Panel recalls that the burden of providing evidence in support of the workers' claims lies with Egypt. The general evidentiary standard applicable to category "C" claims is stated in decision 1 (S/AC.26/1991/1) of the Governing Council, and more specifically in article 35, paragraph 1 of the Rules (S/AC.26/1992/10), which provides that

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)..."

Further, article 35, paragraph 2(c) of the Rules provides that category "C" claims "must be documented by appropriate evidence of the circumstance and amount of the claimed loss" and that "[d]ocuments and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case." In prescribing a lower standard of proof for smaller claims, it provides that "a lesser degree of documentary evidence ordinarily will be sufficient..."

38. Specifying what evidence would be required for a worker's claim to be found to be compensable, article 2 of the MOU provided, inter alia, that

> "Egypt will provide upon request, within the time-limit to be specified by the Panel of Commissioners, copies of 'payment orders' that would include the names of all of the claimants and the amount claimed for each claimant as well as any other available information and documents requested by the Panel of Commissioners."

39. In the Panel's view, the provision contained in article 2 of the MOU provides a good definition of the reasonable minimum evidence applicable under the circumstances of this case. The evidence required is equivalent to the reasonable minimum prescribed by the Rules and the Panel has not requested evidence from Egypt that is beyond the information contained in the payment orders. The Panel therefore concludes that the filing of the requested payment orders constitutes the reasonable minimum evidence required to substantiate the claims in this case.

40. The Panel recalls that the MOU that was signed on 17 June 1993 provides in its Article 2 that, before the merits phase, "Egypt will take such action to prepare the [payment orders and other documents and information] and will keep them in its custody for submission upon request." Egypt, therefore, was put on notice on 17 June 1993 to prepare the payment orders for filing with the Commission. Further, in October

1995, Egypt was allowed four months to file payment orders for deposits found by the Panel to be within the Commission's jurisdiction.

41. Although the difference in the amounts provided by Egypt and Iraq for deposits from 2 July 1990 was evident in their respective submissions of March 1995, it was not until 27 November 1995, after the Oral Hearing had been conducted by the Panel and after the Panel's report on the jurisdictional phase had been issued and transmitted to Egypt and Iraq, that Egypt first raised the issue of requesting Iraq to explain the basis of its calculation of the figure of US$118,102,262.67. In addition, Egypt has not provided evidence, such as sample copies of the "yellow forms" that were issued to the workers upon the deposit of their funds for transfer or affidavits of depositors, in support of the contention that some payment orders issued by the Iraqi banks for deposits made by the workers after 2 July 1990 were not received by the banks in Egypt.

42. The Panel notes that the two requests of Egypt were transmitted to Iraq, together with other submissions of Egypt filed pursuant to the Panel's report, but that Iraq has provided no reply to the assertions of Egypt. It is, therefore, doubtful that a further request to Iraq would yield any further information that would assist the Panel in making its recommendations in the limited time available to the Panel.

43. In addition, the Panel is of the opinion that embarking on the type of investigation required to deal with Egypt's request would not be compatible with the nature of the work of the Commission. In particular, the Panel is unable, within the time period available for its work, to conduct inquiries of this nature that may or may not determine conclusively the existence, or not, of payment orders issued from 2 July 1990 that were not received by the Egyptian banks.

44. In addition to the reasons explained above, there are practical considerations as to why the Panel would not be able to recommend a claim for compensation without being aware of the identity of the claimant and the amount claimed. The identity and the amount claimed by each claimant is a self-evident preliminary requirement, as stated in the category "C" claim form as well as in article 14 of the Rules. If compensation were to be approved for an amount in excess of that for which payment orders have been provided by Egypt, effecting payment of the compensation to the claimants would require the names of the claimants and the respective amounts approved, which have not been provided by Egypt.

45. Further, the Panel notes that the consolidated claim filed by Egypt concerned deposits, the existence of which Egypt was aware of at the time of filing the claim. The figure of US$491,098,538 stated in the consolidated category "C" claim form and in the accompanying Statement of Claim filed by Egypt would have to be assumed to have been calculated on the basis of documents available to Egypt.

46. The Panel notes that Egypt was aware, as it pointed out in its submission of 27 November 1995, of the unusual nature, especially at this stage, of its request that Iraq be required to explain the basis of its calculation in answer to a question addressed by the Panel in the jurisdictional phase. Moreover, Egypt and Iraq were informed in the Panel's report on the jurisdictional phase that the Panel would make its recommendations in the merits phase based on the documents filed pursuant to the said report and the Panel has not been provided with any explanations as to why it should deviate from that decision.

47. The Panel is aware that the total amount of the workers' funds deposited on or after 2 July 1990 in Iraq may well exceed the amount for which Egypt has been able to provide payment orders. For the reasons stated above, however, the Panel is unable to consider recommending payment to any claimant for whom a payment order has not been filed by Egypt and whose identity and amount claimed are not specified. Egypt has filed payment orders with a total value of US$84,751,554, as well as a list of the claimants whose identities are contained in the payment orders. Therefore the figure of US$84,751,554, representing the total value of payment orders that Egypt has filed, will be used by the Panel as a starting point for the verification of the claims in the merits phase.

2. Verification of the Claims

48. The Panel notes that out of the amount of US$84,751,554 put forward by Egypt as the total value of funds deposited by the workers from 2 July 1990 in the Iraqi banks for transfer to Egypt, Iraq challenges the sum of US$13,849,454. Iraq does not put forward any arguments with regard to the rest of the amount, i.e., US$70,902,100, which is, therefore, taken by the Panel as accepted by Iraq. 3/ The Panel finds no need for further verification of these claims and recommends that compensation be awarded with respect to them.

49. From the remaining disputed amount of US$13,849,454, Iraq objects to the sum of US$13,029,405, being the total value of 30,033 deposits made between 2 July and 2 August 1990. Iraq seeks the exclusion of these claims

---

3/ Iraq, in its submissions of November 1996, states that the value of the deposits made between 2 August 1990 and 5 April 1991 is US$71,050,830, (see paragraph 29 above). It is not explained how this amount was calculated. However, when the total value of the claims that Iraq argues should not be compensated is deducted from the amount put forward by Egypt, the resulting amount is US$70,902,100. This amount includes the sum of US$474,611, which is the difference between the total amounts put forward by Egypt (US$84,751,554) and Iraq (US$84,276,943), for deposits after 2 July 1990, for which Iraq has not put forward any arguments to explain this difference.

on the basis that Iraq is not liable for deposits made before 2 August 1990. The Panel is unable to consider this argument in the merits phase as it refers to the question of the jurisdiction of the Commission over claims that have already been decided upon by the Panel in the jurisdictional phase. The Panel, therefore, recommends that compensation be paid with respect to those claims as well.

50. From the remaining disputed amount of US$820,049, Iraq argues for the exclusion of US$196,708, being the total value of 408 claims for deposits made after 5 April 1991. According to Iraq, the Iraqi banks were instructed by a Government directive to suspend all foreign exchange transactions and not to issue payment orders after 5 April 1991. However, due to a breakdown in communications as a result of the Gulf War, some of the bank branches received the instructions late. The Panel notes that the banks in Iraq, for reasons unrelated to the depositors, continued receiving funds from the workers for transfer and issued payment orders after 5 April 1991. Without discussing the nature of the directive and its effects on the bilateral agreements between Iraq and Egypt concerning the transfer of deposits by the workers, the Panel finds that, in any event, there is no basis for not providing compensation for deposits that were accepted by Iraqi banks before receiving the directive. The Panel, accordingly, recommends that compensation be paid with respect to these claims as well.

51. From the remaining disputed amount of US$623,341, Iraq objects to US$382,453, being the total value of 905 claims, on the ground that no payment order was issued for any of those claims in the period from 2 July 1990 and that they do not exist in the records held by Iraq. At the Panel's request, the secretariat has conducted an investigation of Iraq's assertion on this issue. The names of the 905 claimants in question were identified in the computerized lists of claimants filed by Egypt and a search for the relevant payment orders was made among the payment orders that were filed by Egypt. The result was that, of the 905 claims, no payment orders were found for 785 of the names with a corresponding total value of US$314,256. Thus, of the 905 claims for US$382,453 at issue, the Panel recommends compensation for 120 claims for US$68,197 for which payment orders have been filed by Egypt. The Panel further recommends that no compensation be awarded for 785 claims for US$314,256 for which no payment orders have been found.

52. From the remaining disputed amount of US$240,888, Iraq argues for the exclusion of an unspecified part of the sum of US$102,015, representing the partial value of 181 claims that Iraq alleges are in excess of the amounts covered by their respective payment orders. At the request of the Panel, the secretariat has compared the amounts to be transferred for these claims as stated by Iraq against the corresponding payment orders filed by Egypt. Based on this comparison, the Panel was able to establish that the number of such claims at issue is actually 175 rather than 181, as six of the claims were repeated in the lists filed by Iraq. The secretariat's review

also showed that the computerized lists of claimants provided by Egypt do not correspond to the payment orders with respect to US$43,306 in amounts stated for 142 claimants. Thus, the Panel recommends that compensation in the amount of US$58,709 be awarded for the 175 claimants in this grouping which corresponds to the total of the amounts as listed in the respective payment orders. The Panel does not recommend compensation for the amounts totaling US$43,306, found to be in excess of the figures stated on the payment orders.

53. Iraq also argues for the exclusion of US$138,873, the balance of the disputed sum, which represents 181 claims that Iraq alleges were duplicated. At the request of the Panel, Iraq's lists were checked by the secretariat against Egypt's lists of claimants and the relevant payment orders. The secretariat's analysis of the claims established that although the names of the 181 claimants in question appear more than once on the lists, none of these claims are duplicates as the entries relate to separate transfers, usually on different dates and for varying monetary amounts. Thus, the Panel recommends compensation for these 181 claims in the amount of US$138,873.

54. In view of the foregoing, the Panel finds that the total value of the claims in the merits phase is US$84,393,992, representing the total value of deposits in the Iraqi banks from 2 July 1990 for which payment orders have been filed, which are not in excess of the amounts stated on such payment orders and which have not been duplicated.

B. Other Issues

55. The Panel is aware that Egypt made a request for the correction of alleged computational errors in paragraphs 204 and 205 of the Panel's report on the jurisdictional phase, concerning "the calculation of the median or average period between the date the Egyptian workers made their dinar deposits in Iraq and the date the dollar covers for the dinars were expected to be made available in Egypt". According to Egypt, the expectation period should be recalculated as there is no basis for the calculation of a one-month period.

56. The Panel notes, however, that rather than being a request for the correction of computational errors as set out in article 41 of the Rules, Egypt's request raises questions that go to the basis of the findings in the Panel's determinations. The Panel confirms that its report on the jurisdictional phase accurately reflects its recommendations and that the Panel has not identified any computational errors in the said report that need correction.

57. The Panel is also aware of Iraq's request that the workers' claims be resubmitted on individual category "C" claim forms for each claimant, and that Iraq also questioned the validity of the MOU. The Panel finds that

these are issues that had been raised on earlier occasions and of which the Panel was aware in making its recommendations in the jurisdictional phase.

C. Interest

58. Egypt seeks interest on the amount of its claim "at the rate of 5% per annum, as required by the civil law of Egypt."

59. The relevant Governing Council decision concerning the question of interest is decision 16, "Awards of Interest" (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In Decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards" and that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time". Thus, in principle, interest is payable on amounts recommended at a rate to be determined by the Governing Council at a later date.

60. As to the date from which interest will be calculated, neither the agreement between the individual depositor and the Iraqi bank, nor the bilateral agreements between Egypt and Iraq, provide for interest to be paid on the workers' funds while awaiting transfer. Accordingly, the Panel must determine "the date the loss occurred" within the meaning of Governing Council Decision 16, which is the date interest would start to accrue.

61. In the jurisdictional phase the Panel determined that the dollar value of the Iraqi dinars deposited in Iraqi banks for transfer were, on average, received in the corresponding bank in Egypt one month after deposit. Accordingly, "the date the loss occurred" coincides with the period during which the relevant deposits would have been expected to be transferred, this period extending approximately from 2 July 1990 to 30 July 1991.

62. Given that the deposits, consisting of numerous individual payments, were made over a period of time between July 1990 and July 1991 and that the bulk of the deposits were made between July 1990 and January 1991, the Panel fixes 15 October 1990 as the date from which interest on the total sum awarded will be calculated.

IV. RECOMMENDATIONS

63. Pursuant to article 37(e) of the Rules, and having considered the submissions made by Egypt and Iraq, the Panel recommends that:

a. Compensation in the amount of US$84,393,992 be awarded for 223,817 claims of Egyptian workers.

b. All other claims of the Egyptian workers be dismissed.

c. Interest be paid on the total amount awarded under subparagraph (a) above, calculated from 15 October 1990, at a rate to be determined by the Governing Council at the appropriate time.

64. The individual claimants and the amounts of compensation are those corresponding to the listing provided by Egypt in its submissions pursuant to the Panel's report on the jurisdictional phase, with the exception of those claimants whose names are contained in a confidential list to be transmitted to Egypt and Iraq with a copy of this report.

65. The Panel's findings and recommendations are made on the basis of the specific and unique circumstances of these claims, including the fact that there is no dispute between Egypt and Iraq as to the deposits made by the workers. The Panel's findings are thus without prejudice to the conclusions of other panels of Commissioners.

66. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 9 July 1997

(Signed) Karl-Heinz Böckstiegel
Chairman

(Signed) Lazhar Bouony
Commissioner

(Signed) Enrique P. Syquia
Commissioner

UNITED NATIONS

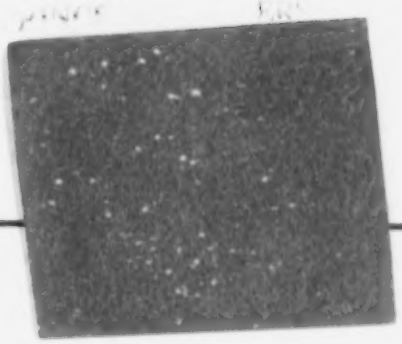
S

Security Council

Distr.
GENERAL

S/AC.26/1997/4
2 October 1997

Original: ENGLISH



UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

SECOND REPORT OF THE EXECUTIVE SECRETARY PURSUANT TO ARTICLE 41 OF THE PROVISIONAL RULES FOR CLAIMS PROCEDURE: REQUESTED CORRECTIONS TO APPROVED CLAIM AWARDS

1. The present report identifies, pursuant to article 41 of the Provisional Rules For Claims Procedure (S/AC.26/1992/10) (the "Rules"), requested corrections to approved claim awards in claims category "A".

2. As noted in the last such report of the Executive Secretary (S/AC.26/1997/2), requested corrections typically have been reported by the Commissioner Panels in their reports and recommendations to the Governing Council. However, the category "A" Panel has concluded its work and no longer sits. Therefore, the requests for corrections to approved claim awards in category "A" will be reported by the Executive Secretary to the Governing Council.

3. Corrections have been requested to category "A" claim awards in the first, third, fourth, fifth and sixth instalments of category "A".

I. FIRST INSTALMENT CORRECTIONS

4. In the first instalment of category "A" claims, one claim submitted by Thailand was found to be a duplicate of a claim awarded compensation in the same instalment. No compensation should be awarded for the duplicate claim. The total recommended award for Thailand in the first instalment should be amended accordingly from US$1,512,500.00 1/ to US$1,508,500.00.

1/ This amount includes claims moved forward by the Governing Council from the fourth instalment to the first instalment for purposes of payment.

.../

II. THIRD INSTALMENT CORRECTIONS

5. In the third instalment of category "A" claims, four claims were found to be duplicates of claims previously awarded compensation. They include three claims submitted by Jordan and one claim submitted by Sri Lanka. No compensation should be awarded for the duplicate claims. The total recommended award for those countries in the third instalment should be amended as follows:

Requested corrections to approved claim awards in category "A": Third instalment

Country	Previous Total Recommended Award (US$)	Corrected Total Recommended Award (US$)
Jordan	93,314,000.00	93,304,000.00
Sri Lanka	52,457,000.00	52,453,000.00

III. FOURTH INSTALMENT CORRECTIONS

6. In the fourth instalment of category "A" claims, one claim submitted by India was found to be a duplicate of a claim previously awarded compensation. No compensation should be awarded for the duplicate claim. The total recommended award for India in the fourth instalment should be amended accordingly from US$144,894,500.00 to US$144,890,500.00.

IV. FIFTH INSTALMENT CORRECTIONS

7. In the fifth instalment of category "A" claims, four claims were found to be duplicates of claims previously awarded compensation. They include one claim submitted by Bangladesh, one submitted by India, one submitted by Jordan and one submitted by the United Kingdom. No compensation should be awarded for the duplicate claims. One family claim, submitted by Canada, in the amount of US$4,000 should be amended to US$8,000. The total recommended award for each of these countries in the fifth instalment should be amended as follows:

Requested corrections to approved claim awards in category "A": Fifth instalment

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,351,000.00	52,348,500.00
Canada	386,500.00	390,500.00

India	145,473,000.00	145,469,000.00
Jordan	17,281,500.00	17,279,000.00
United Kingdom	1,308,500.00	1,306,000.00

V. SIXTH INSTALMENT CORRECTIONS

8. In the sixth instalment of category "A" claims, five claims submitted by Jordan were found to be duplicates of claims previously awarded compensation. No compensation should be awarded for the duplicate claims. The total recommended award for Jordan in the sixth instalment should be amended accordingly from US$18,736,500.00 to US$18,717,000.00.

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/AC.26/1997/5
2 October 1997

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

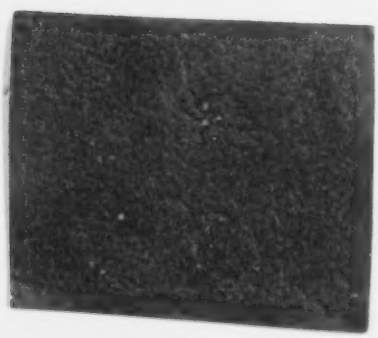
STATEMENT BY THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION IN CONJUNCTION WITH THE DECISION CONCERNING THE EGYPTIAN WORKERS' CLAIMS (DOCUMENT S/AC.26/Dec.43 (1997)) MADE AT THE 71ST MEETING OF THE GOVERNING COUNCIL, HELD ON 1 OCTOBER 1997 AT GENEVA

The Governing Council recalls that, as noted in paragraph 22 of the Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) (document S/22559, dated 2 May 1991), the United Nations Compensation Commission does not have exclusive competence to consider claims against Iraq arising from Iraq's unlawful invasion and occupation of Kuwait.

Thus, all claimants have the right to pursue their claims through other mechanisms. This includes claimants covered by paragraph 5 of Decision 43, taken on 1 October 1997, concerning the Egyptian Workers' Claims.

However, Governments are reminded that they must observe the requirements of Decision 13 (S/AC.26/1992/13, dated 25 September 1992) to avoid multiple recovery of compensation by claimants for the same loss.

It will also be recalled that under paragraph 16 of UN Security Council resolution 687 (1991) the debts and obligations of Iraq arising prior to 2 August 1990 are to be addressed through the normal mechanisms.



UNITED
NATIONS

S

Security Council

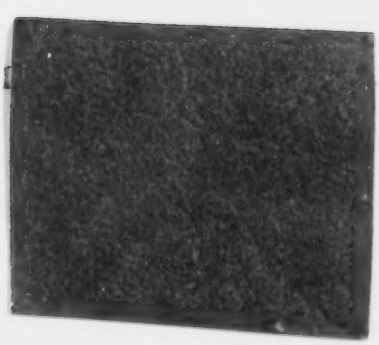
Distr.
GENERAL

S/AC.26/1997/6
18 December 1997

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART ONE OF THE FIRST INSTALMENT OF CLAIMS BY GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS (CATEGORY "F" CLAIMS)



GE.97-65309

CONTENTS

	Paragraphs	Page
Introduction	1-5	4
I. PROCEEDINGS	6-13	5
II. THE CLAIMS	14-46	7
A. Contract	15-17	7
1. Hungary	15	7
2. The Netherlands	16	7
3. New Zealand	17	8
B. Business transaction or course of dealing	18	8
Democratic People's Republic of Korea	18	8
C. Real property	19-22	8
1. Denmark	19	8
2. Hungary	20-21	8
3. Nigeria	22	9
D. Tangible property	23-29	9
1. Democratic People's Republic of Korea	23-25	9
2. Denmark	26	10
3. Hungary	27	10
4. New Zealand	28	10
5. Nigeria	29	10
E. Bank accounts and securities	30	11
New Zealand	30	11
F. Payment or relief to others	31-37	11
1. Germany	31-32	11
2. Hungary	33	11
3. The Netherlands	34-35	11
4. Sri Lanka	36-37	12
G. Evacuation costs	38-45	12
1. Democratic People's Republic of Korea	38	12
2. Denmark	39-40	13
3. Hungary	41	13
4. The Netherlands	42	13
5. New Zealand	43-44	14
6. Nigeria	45	14
H. Public service expenditures	46	14
Nigeria	46	14
III. LEGAL FRAMEWORK	47-64	15
A. Applicable law	47-55	15
B. Procedural and evidentiary requirements	56-62	16
C. The Panel's role in the proceedings	63-64	17

IV. COMPENSABILITY OF THE CLAIMS 65-98 18
A. Contract 66-68 18
B. Business transaction or course of dealing 69-70 19
C. Real property 71-75 19
D. Tangible property 76-81 20
E. Bank accounts and securities 82 21
F. Payment or relief to others 83-90 22
G. Evacuation costs 91-97 24
H. Public service expenditures 98 26

V. OTHER ISSUES 99-104 26
A. Currency exchange rate 99-102 26
B. Interest 103-104 27

VI. QUANTIFICATION OF THE CLAIMS 105-108 27

VII. RECOMMENDATIONS 109 28

Notes 30

Introduction

1. Following the creation of the United Nations Compensation Commission (the "Commission") by the United Nations Security Council 1/, the Commission's Governing Council (the "Governing Council") established six claims categories in which individuals, corporations and Governments could seek compensation for losses arising out of Iraq's invasion and occupation of Kuwait. Governments and international organizations were required to file their claims in category "F". Based on the claimants' classification of their claims, 42 Governments and 3 international organizations submitted 298 category "F" claims seeking compensation for a total amount of approximately 141 billion United States dollars ("US$") for their alleged losses. 2/

2. During its twenty-first session, on 22-23 July 1996, the Governing Council appointed a Panel of Commissioners composed of Mr. Bjørn Haug as Chairman and Messrs. Georges Abi-Saab and Michael J. Bonell as Commissioners (the "Panel") to review category "F" claims. In his reports of 30 April and 31 July 1996 to the Governing Council, the Executive Secretary of the Commission included the claims that are the subject of this report. 3/ The reports were issued in accordance with article 16, paragraph 3, of the Provisional Rules for Claims Procedure (the "Rules"). 4/ As provided for in the Rules, these reports were circulated to the members of the Governing Council, to the Government of the Republic of Iraq, and to Governments and international organizations that had submitted claims. Pursuant to article 32, paragraph 1, of the Rules, a number of Governments, including Iraq, submitted additional information and their views on the Executive Secretary's reports to the secretariat for transmission to the Panel.

3. On 20 March 1997, the first instalment of eleven category "F" claims was submitted to the Panel pursuant to article 32 of the Rules. Nine of the claims in the first instalment (the "Claims") for a total amount of approximately US$4,506,800 are the subject of this report. The following Claims were filed by Governments for certain of their political subdivisions, agencies, ministries, instrumentalities or controlled entities with the approximate amount claimed noted in parenthesis: 5/

(a) The Democratic People's Republic of Korea: State Commission of External Economic Affairs (US$1,148,474.28);

(b) The Kingdom of Denmark: Ministry of Foreign Affairs (US$747,734.79);

(c) The Federal Republic of Germany: North Rhine-Westphalia Ministry of Employment, Health and Social Affairs (US$180,287.46);

(d) The Republic of Hungary: Ministry of Foreign Affairs (US$219,044.09) and Ministry of International Economic Relations (US$59,055.61);

(e) The Kingdom of the Netherlands: Ministry of Foreign Affairs (US$351,917.15);

(f) New Zealand: Ministry of Foreign Affairs and Trade (US$76,366.67);

(g) The Federal Republic of Nigeria: Nigerian Embassy in Kuwait (US$403,771.51);

(h) The Democratic Socialist Republic of Sri Lanka: Ministry of Foreign Affairs (US$1,273,356.40).

These entities are referred to herein as "Claimants".

4. In article 38(e) of the Rules, the Governing Council provided that the Panel:

> "... report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be awarded for each claimant. Each report will briefly explain the reasons for the recommendations."

Pursuant to such requirement, this report contains the Panel's findings and recommendations regarding the Claims.

5. The remaining two claims in the first instalment (the "Kuwaiti Claims") were submitted by Kuwait University and the Kuwait Ministry of Foreign Affairs (the "Kuwaiti Claimants"). For the reasons explained in the next paragraph the Panel will issue a separate report covering the Kuwaiti Claims in due course.

I. PROCEEDINGS

6. Based on the amount of compensation sought, the complexity of the legal issues raised and the volume of documentation filed in support of the Kuwaiti Claims, the Panel decided to classify them as "unusually large or complex", pursuant to article 38(d) of the Rules. Accordingly, the Panel gave notice to the Kuwaiti Claimants of its intention to complete its review of the Kuwaiti Claims within 365 days. Given those same considerations, the Panel determined that it would be possible to complete the review of the remaining nine Claims and submit a report and recommendations to the Governing Council within 180 days, in accordance with article 38(c) of the Rules.

7. On 21 March 1997, the Panel issued its first Procedural Orders. The Panel's classification of the Kuwaiti Claims as well as the remaining nine Claims was stated in the Procedural Orders that were transmitted by the secretariat to each Claimant. On the Panel's instructions, the secretariat transmitted copies of such Orders to Iraq.

8. In the preliminary review of the Claims, it was noted that several of the Claimants were seeking compensation for payments made to employees or other persons for the loss of tangible property or the loss of income or support. Because the individuals themselves may have been eligible to file claims with the Commission for such losses in categories "C" and "D", the Panel was concerned that the Claims might be seeking compensation for losses that were the subject of decided or pending category "C" and "D" claims. 6/ At the Panel's request, the secretariat consulted the Commission's claims databases and dockets and determined that there was a potential overlap between several of the Claims and certain category "C" claims.

9. As part of its effort to verify the Claims and, given its concern over the possible duplication of claims across categories, the Panel included interrogatories and requests for the production of documents in the Procedural Orders for five of the Claims. These Orders sought, inter alia, detailed information regarding the potential overlap between the Claims and the individual claims filed in category "C". 7/ The relevant Claimants were requested to file their responses by 20 May 1997. As a result of this process, portions of several Claims were disallowed because they sought compensation for losses that had been the subject of category "C" claims. 8/

10. The Panel considered that a third party, the Central Bank of Kuwait, might possess relevant information regarding the Sri Lankan claim. Accordingly, the Procedural Order issued for that Claim requested that the Government of Kuwait comment on certain statements made within the Claim and file any documents relevant to the Claim with the Commission.

11. On 17 April 1997, the Panel issued a Procedural Ruling regarding the Nigerian claim. In its ruling, the Panel noted that a portion of the Claim sought compensation for tangible property lost by the Claimant's Finance Attaché in Kuwait. However, the Claim contained no evidence demonstrating that the Claimant itself actually incurred a loss by reimbursing its employee for his property loss. The Panel, therefore, ruled that the portion of the Claim relating to the Finance Attaché's tangible property loss should be severed from the Claim. The Panel instructed the secretariat to return the documents relating to the severed portion of the Claim to the Government of Nigeria and to inform Nigeria that its Finance Attaché could seek compensation for his loss by submitting a new claim in category "C". On 15 May 1997, in accordance with the Panel's Procedural Ruling, Nigeria resubmitted this portion of the Claim in category "C" on behalf of its Finance Attaché.

12. Sri Lanka stated in its response to the Panel's Procedural Order that certain of the evidence requested was in the custody of its former Honorary Consul in Jordan. Deeming that such evidence, banknotes with a face value of 368,000 Kuwaiti dinars ("KD"), was critical to the verification of the Claim, on 23 May 1997 the Panel issued a further Procedural Order requesting that the evidence be produced at the Commission's headquarters

in Geneva on or before 30 June 1997. The Claimant complied with the Order and delivered the banknotes to the Commission on 18 June 1997.

13. In its proceedings, the Panel held regular sessions with the assistance of the secretariat. These sessions were conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided administrative, technical and legal support to the Panel. The services of an independent loss adjusting firm were also retained to assist the secretariat and the Panel in reviewing the Claims.

II. THE CLAIMS

14. Pursuant to Governing Council decision 7 9/, the category "F" claim form used by Governments for submitting their claims classifies losses as follows: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs (of citizens or other nationals); public service expenditures; environmental damage and depletion of natural resources. The Panel notes that several of these classifications relate to losses incurred by States in the exercise of their protective functions. The Claims allege eight of these eleven loss types. The Claimants' contentions regarding their losses are briefly described below by loss type. In some cases, based on its review of the documents underlying the Claims, the Panel has reclassified the losses stated by Claimants on their claim forms.

A. Contract

1. Hungary

15. The Hungarian Ministry of Foreign Affairs 10/ claims that, following Iraq's invasion and occupation of Kuwait, it was required to close its embassy in Kuwait City on or about 31 August 1990. The Claimant states that, following the closure of its embassy, it made "redundancy payments" to its local staff pursuant to the terms of their employment relationship, which was governed by Kuwaiti labour law. Hungary seeks compensation in the amount of US$21,067 for the expenses it incurred in making such redundancy payments.

2. The Netherlands

16. The Netherlands claims that "Iraq's armed attacks on Kuwait caused extensive damage to [its diplomats'] household effects, while many personal belongings disappeared in widespread plundering by [the] Iraqis." The Claimant states that "once it was possible to make an estimate of the actual damage to their personal property, staff of the embassies in Kuwait and Baghdad were reimbursed for the loss of and or damage to their property". The Claimant asserts that it was required to make the reimbursements pursuant to the Netherlands Foreign Service Regulations which govern the employment relationship between the Claimant and its

diplomatic personnel. The Netherlands seeks compensation in the amount of 225,980.28 Netherlands guilders ("f.") for the expenses it incurred in making the reimbursements.

3. New Zealand

17. New Zealand claims that it made severance payments to the local staff at its embassy in Baghdad after that embassy was closed on 12 December 1990. The Claimant states that the payments were made in accordance with the employment contracts that it had previously entered into with the workers. New Zealand seeks compensation in the amount of 36,179 New Zealand dollars ("$NZ") for the expenses it incurred in making such redundancy payments.

B. Business transaction or course of dealing

Democratic People's Republic of Korea

18. The Democratic People's Republic of Korea, which operated a trade mission in Kuwait City prior to the invasion, claims that on 23 June 1990 it paid a deposit on a new car to a Kuwait City automobile dealer. The car was never delivered to the Claimant. After the liberation of Kuwait, the Claimant requested that the dealer either deliver the car or refund its deposit. The dealer refused, stating that he could not refund the Claimant's money until he had been "compensated for all cars [he] lost during the war from the UNCC". The Claimant seeks compensation in the amount of KD 5,825.500 for its lost deposit on the new car.

C. Real property

1. Denmark

19. Denmark claims that, following Iraq's invasion of Kuwait, it attempted to keep its embassy in Kuwait City open. However, Iraq reportedly refused "to recognize the Embassy of Denmark in Kuwait and subsequent[ly] order[ed]" that it be closed down. The Claimant alleges that it had paid rent in advance for its embassy premises for the period of the occupation of Kuwait but, due to the forced closure of the embassy as of 10 September 1990, it was deprived of the use of the premises. Denmark seeks compensation in the amount of 266,151 Danish krone ("DKr") for rent that it prepaid for its embassy premises in Kuwait City during the period of the occupation.

2. Hungary

20. Following Iraq's invasion of Kuwait, the Hungarian Ministry of Foreign Affairs evacuated its diplomats from Kuwait and Iraq. The Claimant asserts that, upon resuming operations at its embassies in both countries, it was required to repair the buildings and to replace "damaged and scrapped assets", including security systems, in Baghdad and Kuwait City.

Hungary seeks compensation in the amount of US$73,037.81 for such repair and replacement costs.

21. The Hungarian Ministry of International Economic Relations maintained a commercial section at the Hungarian embassy in Kuwait City. In a separate claim from that submitted by the Ministry of Foreign Affairs, it alleges that, following the liberation of Kuwait, it was required to repair physical damage to the offices of its commercial section. Hungary also seeks compensation in the amount of KD 5,973.722 for these repair costs.

3. Nigeria

22. The Claimant states that, following the Iraqi invasion of Kuwait, it evacuated its diplomats and temporarily closed its embassy in Kuwait City. Following the liberation of Kuwait, the Claimant asserts that, among other damage inflicted, the embassy had been vandalized, the garden ruined and two of the walls of the embassy contained bullet holes. Nigeria seeks compensation in the amount of US$12,655 for the costs of repairing the damage to its embassy.

D. Tangible property

1. Democratic People's Republic of Korea

23. The Democratic People's Republic of Korea alleges that at dawn on 16 September 1990, during the Iraqi occupation of Kuwait

> "... five armed men came in the premises of the Trade Representation of DPRK in Kuwait and at gunpoint destroyed two safes to take away 550 thousand German Marks and three bars of gold each weighing 12.5 kilograms ..."

The Claimant seeks compensation in the amount of US$799,832.92 for the loss of such currency and gold.

24. The Claimant also asserts that "as a result of ... Iraq's 2 August 1990 invasion of Kuwait, the Trade Representation of the Democratic People's Republic of Korea could not continue to carry out its mission and had to evacuate its officials from Kuwait on 16 September 1990". The Claimant states that, when its representatives returned to Kuwait following its liberation, they found that the trade mission's office equipment had been looted. The Claimant seeks compensation in the amount of KD 5,840 for its lost office equipment.

25. The Claimant further asserts that, having been evacuated from Kuwait, its employees and citizens were required by Iraq to go to Baghdad. When the evacuees were eventually allowed to leave Iraq, the Claimant states that "the seven families had to leave the cars parked outside the courtyard of the Embassy of the People's Republic of China in Iraq" and that afterwards Iraqi officials took possession of the cars. The Democratic

People's Republic of Korea seeks compensation in the amount of KD 64,200 for the cars allegedly taken by Iraqi officials.

2. Denmark

26. Denmark claims that the furniture, security and telecommunications equipment and an automobile located at its Kuwait City embassy were damaged or stolen during the period of the Iraqi occupation. The Claimant alleges that even before it was forced to evacuate its embassy

> "... Iraqi military forces broke into the residence of the Ambassador on 25 August 1990 in order to rig up gun nests on the roof. Iraqi military personnel committed burglary in the chancellery on 29 August and on 13 September 1990."

Denmark seeks compensation in the amount of DKr 389,485 for the lost or damaged furniture, equipment and car.

3. Hungary

27. Hungary's Ministry of International Economic Relations claims that its Kuwait City offices were "ransack[ed] and damage[d]" "by the invading Iraqi soldiers" following Iraq's invasion of Kuwait. The Claimant states that, when its representatives returned to Kuwait, they found that its office equipment and supplies were "missing" or "damaged beyond repair". The Claimant also asserts that four apartments that it maintained for its diplomats were looted during the Iraqi occupation of Kuwait. Hungary seeks compensation in the amount of KD 11,094.250 for the lost or damaged office equipment and the contents of its apartments.

4. New Zealand

28. New Zealand claims that one of its Baghdad embassy vehicles was in Kuwait for repair and maintenance at the time of the Iraqi invasion. The Claimant states that it was unable to recover the vehicle before its embassy in Baghdad was closed. It asserts that, following the liberation of Kuwait, its efforts to trace the vehicle were unsuccessful. New Zealand seeks compensation in the amount of $NZ 17,322 for the lost vehicle.

5. Nigeria

29. After closing its embassy in Kuwait City, Nigeria evacuated its diplomats and others by car via Baghdad. The Claimant asserts that during the evacuation several of its cars were left in Baghdad. Following the liberation of Kuwait, the Claimant states that it sent its employees to Baghdad to recover the vehicles, which they did. Nigeria seeks compensation in the amount of US$29,810.31 for the cost of recovering the vehicles that were left in Baghdad during the evacuation.

E. Bank accounts and securities

New Zealand

30. New Zealand claims that, prior to the Iraqi invasion of Kuwait, it maintained an Iraqi dinar bank account at the Al Ahli Bank of Kuwait. The Claimant alleges that the "closure of the Al Ahli Bank of Kuwait at the time of the invasion prevented [it] from recovering a credit [balance] in the account". As of the date it submitted its Claim, the Claimant states that it was unable to have access to its funds. New Zealand seeks compensation in the amount of $NZ 7,388 for the money held in its Iraqi dinar denominated bank account in Kuwait.

F. Payment or relief to others

1. Germany

31. Germany claims that the Iraqi invasion of Kuwait

> "... caused both German and non-German individuals to leave Kuwait and take refuge in Germany or other countries. Under German social assistance laws, such individuals received financial support. To all intents an[d] purposes, these benefits must be seen as part of the damages caused by the unlawful invasion of Iraqi forces into Kuwait."

32. The Claimant states that it gave financial support to several German nationals who fled Kuwait following the invasion leaving their assets behind or who lost their jobs or means of support in Kuwait; to an Iraqi national and his family who had fled Kuwait and sought political asylum in Germany; to Kuwait-based students studying in Germany whose source of parental support was cut off after the Iraq invasion; and to a Kuwaiti national who had been on holiday in Germany and was stranded at the airport when his flight home was cancelled due to the invasion. Germany seeks compensation in the amount of 281,609.02 deutsche mark ("DM") for the financial support that it paid to such persons.

2. Hungary

33. The Hungarian Ministry of Foreign Affairs claims to have incurred "[e]xtraordinary compulsory vacation costs of the Hungarian staff of embassies both in Kuwait and Baghdad" following their evacuation from those countries. Hungary seeks compensation in the amount of US$21,898 for such costs.

3. The Netherlands

34. The Netherlands claims that, following the Iraqi invasion of Kuwait, it introduced a "financial assistance scheme" for its Middle Eastern diplomats and their families in order

> "... to help cover the extra costs incurred by personnel who remained [in the Netherlands instead of returning to their duty posts], their families, and personnel and the families of personnel who were repatriated [to the Netherlands] at a later stage".

35. The Claimant states that the scheme covered items such as rent for furnished accommodation, hotel accommodation, school fees, a clothing allowance and an allowance for families who were obliged to remain in the Netherlands without a partner. The Netherlands seeks compensation in the amount of f. 393,745.82 for the costs it incurred through its financial assistance scheme.

4. Sri Lanka

36. Sri Lanka claims that its Honorary Consul in Jordan provided humanitarian support to the thousands of Sri Lankan refugees who fled Kuwait via Jordan following the Iraqi invasion of Kuwait. The Claimant asserts that, in the aftermath of the invasion, Jordanian banks would not exchange its citizens' Kuwaiti currency for Jordanian currency. The Sri Lankan refugees, it claims, were thus unable to purchase airline tickets out of Jordan or necessities of life in Jordan.

37. The Claimant states that its Honorary Consul, in light of this situation, exchanged KD 741,000 of the refugees' money. It asserts that the currency exchanges were made only in small amounts for each person and were made solely in order to provide the refugees with funds for urgent expenses. The Claimant contends that, after the liberation of Kuwait, the Central Bank of Kuwait refused to accept KD 368,000 of the banknotes exchanged by the Claimant's Honorary Consul. The Central Bank of Kuwait rejected the banknotes because their serial numbers indicated that they were among the notes looted from the vaults of the Central Bank by Iraqi forces during the occupation. The Claimant alleges that immediately upon entering Kuwait City the Iraqi forces stole the dinar notes from the Central Bank and circulated them. Such notes, according to the Claimant, ultimately ended up in the hands of the Sri Lankan refugees. This assertion is also made by the Government of Kuwait, which has filed a separate claim for its Central Bank arising out of the theft. 11/ Sri Lanka seeks compensation in the amount of KD 368,000 for its invalid bank notes.

G. Evacuation costs

1. Democratic People's Republic of Korea

38. The Democratic People's Republic of Korea claims that it was required to evacuate its trade representatives and citizens from Kuwait on a journey that took them through Iraq, Jordan and other countries before eventually reaching Pyongyang. The Claimant states that, upon their arrival in Baghdad, its evacuees "had to stay from 16 to 20 September 1990 at the

expense of the Government of the DPRK in [the] Rasheed hotel in Baghdad because the Iraqis did not allow the families to leave Iraq until the families obtained through [an] unofficial channel the exit permission with extra cost". The Claimant seeks compensation in the amount of US$83,392.23 for the cost of evacuating its trade representatives and citizens from Kuwait to Pyongyang. This amount includes the sum paid through an unofficial "Iraqi channel" for permission to leave Iraq.

2. Denmark

39. Denmark claims that it incurred expenses as a result of "the forced evacuation of a number of Danish citizens from Kuwait and their illegal detention in Baghdad by the Government of Iraq". The Claimant states that the

> "... basic pattern as regards Danish citizens was that most of them left Kuwait organized as a group on 23 August 1990 in a motor-car convoy to Baghdad. There, since the Authorities did not immediately grant permission to leave the country, they had to be accommodated in hotels at the expense of the Danish Government, until they were allowed to leave, in small or larger groups."

40. In addition to evacuating its citizens from Kuwait and Iraq, the Claimant asserts that it was required to evacuate its diplomats from Kuwait City and Baghdad as well as from other Middle Eastern cities, including Ankara, Riyadh, Teheran, Tel Aviv and Damascus. Denmark seeks compensation in the amount of DKr 3,822,547.67 for the costs it incurred in evacuating its citizens and diplomats from Iraq, Kuwait and other Middle Eastern countries.

3. Hungary

41. The Hungarian Ministry of Foreign Affairs claims that, in the aftermath of the Iraqi invasion of Kuwait, it was required to evacuate "Hungarian citizens from Kuwait and Baghdad". In connection with the evacuation, the Claimant alleges that it paid for buses, catering services and chartered aircraft for its evacuees. The Claimant also asserts that it evacuated its diplomats from Kuwait and Iraq to Budapest by car. Hungary seeks compensation in the amount of US$103,041 for the expenses it incurred in evacuating its diplomats and citizens from Iraq and Kuwait.

4. The Netherlands

42. The Netherlands claims that "[a]t the beginning of December 1990, all remaining members of staff from the embassy in Kuwait, including the ambassador were repatriated from Baghdad where they had been since leaving Kuwait". The Netherlands seeks compensation for an unspecified amount associated with the evacuation of its diplomats from Kuwait and Iraq.

5. New Zealand

43. New Zealand claims that the invasion of Kuwait "forced the closure of the New Zealand Embassy" in Iraq several months later. As a result, it was required to evacuate its diplomats from Baghdad. The Claimant states that:

> "... under normal circumstances, the two New Zealand staff at the Embassy would have been returned to New Zealand as part of a preplanned transfer within the standard budget ... [but] circumstances created by the invasion forced the Ministry to use evacuation plans in less than ideal conditions. The consequence of this was that the two officers were transferred at a cost ... more than a normal transfer."

New Zealand seeks compensation in the amount of $NZ 36,312, which represents the difference between the cost of evacuating its diplomats after the invasion and the cost of transferring them under normal circumstances.

44. The Claimant also asserts that its embassy in Baghdad supported and provided relief to New Zealand nationals in Iraq who were "adversely affected by the invasion of Kuwait" and were evacuated from the country. Such support "required the provision of services and resources over and above those provided in the normal operation of the New Zealand Embassy in Baghdad". New Zealand also seeks compensation in the amount of $NZ 26,514 for the extraordinary expenses that its embassy incurred assisting in the evacuation of its nationals from Iraq.

6. Nigeria

45. Nigeria claims that it "evacuated its five member staff and all their family members, nine resident Nigerians and members of their family, six Sierra Leone nationals, six Beninese nationals, one Togolese together with all their family members from Kuwait through Baghdad, Jordan to Egypt". The Claimant states that the embassy staff members were evacuated to Abu Dhabi, while the Nigerian civilians were evacuated "to Nigeria [and] the other African nationals were handed over to their respective [embassies] in Cairo Egypt." Among the expenses the Claimant asserts that it incurred was the purchase of 60 gas masks for the evacuees. Nigeria seeks compensation in the amount of US$107,500.63 for these evacuation costs.

H. Public service expenditures

Nigeria

46. Nigeria claims that, following the Iraqi invasion of Kuwait, its Kuwait City embassy was asked by the Nigerian Ministry of Foreign Affairs to relocate its Ambassador and staff to Abu Dhabi. Following the liberation of Kuwait, the Claimant asserts, it relocated its operations back to Kuwait City. Consequently, it claims that it incurred substantial

operating expenses for its temporary embassy in Abu Dhabi during the period of the occupation of Kuwait. Nigeria seeks compensation for such expenses in the amount of US$204,126.74.

III. LEGAL FRAMEWORK

A. Applicable law

47. After the suspension of offensive combat operations by Kuwait and the United Nations Member States cooperating with Kuwait, the Foreign Minister of Iraq confirmed, in letters to the Security Council, Iraq's agreement to comply fully with all of the relevant resolutions 12/ thereby recognizing the responsibility of Iraq "under international law ... for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq". 13/

48. The Security Council, in paragraph 16 of resolution 687 (1991), decided that "Iraq ... is liable under international law for any direct loss, damage ... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". In passing resolution 687 (1991), the Security Council acted in the exercise of its powers to maintain and restore international peace and security under Chapter VII of the United Nations Charter. 14/

49. Based on the foregoing, the Panel considers as established the responsibility of Iraq under international law for the above-mentioned direct losses, damages or injuries. 15/

50. Pursuant to article 31 of the Rules, the Panel in deciding the claims shall apply the following:

> "... Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

51. The Governing Council has provided some guidance on the issue of what types of loss are to be considered direct and, therefore, compensable. The most relevant decisions of the Governing Council to the Claims covered by this report are decisions 7 and 9.

52. In decision 7, the Governing Council considered direct losses to include

> "... any loss suffered as a result of ... [m]ilitary operations or threat of military action by either side during the period 2 August to 2 March 1991; ... [d]eparture of persons from or their inability

> to leave Iraq or Kuwait (or a decision not to return) during that period; ... [a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation; ... [t]he breakdown of civil order in Kuwait or Iraq during that period; or ... [h]ostage-taking or other illegal detention". 16/

53. In the same decision, the Governing Council added, in paragraph 36, that such losses include "loss of or damage to property of a Government, as well as losses and cost incurred by a Government in evacuating its nationals from Iraq or Kuwait". Moreover, the Governing Council stated that compensation is available to "reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

54. In decision 9, the Governing Council further defined what constitutes a direct loss by deciding that "[i]n a case where business property had been lost because it had been left unguarded by company personnel due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". 17/ While decision 9 focuses on business losses, it is the Panel's view that the Governing Council's guidance regarding directness and causation where unguarded property has been damaged or destroyed is equally applicable to Government claims. 18/

55. These rules and directives governing the activities of the Panel have been interpreted in light of general principles of international law. Such international legal principles were also applied by the Panel to fill gaps where necessary.

B. Procedural and evidentiary requirements

56. In contrast to the simplified statement of claim and evidentiary requirements imposed on individual claimants seeking compensation in the expedited "A", "B" and "C" claims categories, the Governing Council expressly stated that with respect to business losses there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for a claim to receive compensation with respect to business losses. 19/ In the Panel's view, this requirement applies to all claims in category "F".

57. All category "F" claimants were required to "submit with the[ir] claim forms ... a separate 'Statement of Claim'" which had to include the following particulars:

> "[t]he date, type and basis of the Commission's jurisdiction for each element of loss; ... [t]he facts supporting the claim; [t]he legal basis for each element of the claim; and [t]he amount of compensation sought and an explanation of how this amount was arrived at". 20/

58. In addition to submitting a statement of claim, under article 35, paragraph 1, of the Rules, all category "F" claimants were required to submit "documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". 21/ The Governing Council emphasized the mandatory nature of this requirement in decision 7, paragraph 37, which states that "[s]ince these [category "F"] claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence".

59. Pursuant to article 6, paragraph 5, of the Rules, the statement of claim and any documents submitted in support of a claim "must be submitted in English or be accompanied by an English translation".

60. In its review of the Claims, the Panel found that all the Claims contained a statement of claim and evidence sufficient to establish at least parts of certain loss elements alleged within the Claims. But the Panel also found that within certain Claims individual loss elements or portions thereof were not supported by particularized statements of claim or documentary or other evidence sufficient to demonstrate the circumstances and amount of the claimed loss. In such cases, the Panel could not recommend that compensation be awarded for the unsubstantiated losses. The Panel's decision not to recommend compensation for portions of Claims that did not state the circumstances of the alleged loss with particularity or that were not supported by evidence sufficient to establish such a loss is not only in accordance with the Rules of the Commission, but is also consistent with the general principles of international procedural law and practice. 22/

61. Where Claimants submitted a statement of claim meeting the Commission's requirements and the statement was supported by documentary or other evidence, the Panel was required, under article 35, paragraph 1, of the Rules, to "determine the admissibility, relevance, materiality and weight" of such evidence. In evaluating the evidence submitted by the Claimants, the Panel had to decide whether such evidence was sufficient to demonstrate the circumstances and the amount of the claimed loss.

62. In many of the Claims the Claimants' documentary or other evidence established that an alleged loss had, in fact, occurred. But the evidence was insufficient in those Claims to demonstrate with a reasonable degree of certainty the amount of the loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation that should be awarded. 22/ In exercising such discretion, the Panel took into account the level and type of evidence that should reasonably be required of a Claimant given the overall circumstances at the time of the loss, particularly in Iraq and Kuwait.

C. The Panel's role in the proceedings

63. In order to make its report on the Claims to the Governing Council and recommend the amount that should be awarded to each Claimant, the Panel

was required to make determinations of law and fact for every Claim. The Panel determined, on the basis of the facts that it considered had been substantiated by each Claimant, whether the loss was eligible for compensation under the applicable rules and criteria. If the loss was found to be compensable, the Panel then determined the proper amount of compensation that should be awarded. 24/

64. In view of the fact that Iraq had limited opportunities to comment on or object to the Claims, the Panel considered that it was under a stringent duty to determine with respect to each Claim whether the alleged loss had occurred, whether it was directly caused by Iraq's invasion and occupation of Kuwait and whether the amount of loss was adequately established. Furthermore, the Panel has given careful consideration to the legal positions taken by Iraq as well as by other Governments that submitted additional information and their views on the Executive Secretary's reports circulated pursuant to article 16 of the Rules.

IV. COMPENSABILITY OF THE CLAIMS

65. The Panel now considers the compensability of the Claims in light of the legal framework set out above.

A. Contract

66. New Zealand and the Hungarian Ministry of Foreign Affairs seek compensation for redundancy payments that they made to their local employees upon the closure of their embassies in Kuwait and Iraq, respectively. The relationship between the Claimants and their former employees was contractual in nature and the terms of such contracts, whether written or implied by law, required that the payments be made upon termination of the employment relationship.

67. The Netherlands seeks compensation for reimbursements that it made to its diplomats whose property was lost or damaged in Kuwait or Iraq. Here, again, the relationship between the Claimant and its diplomats was contractual in nature and the regulations governing the relationship required the Claimant to make the reimbursements.

68. As noted above, the Governing Council in decision 7 provided that compensation is available to "reimburse payments ... by Governments ... to ... employees ... pursuant to contractual obligations -- for losses covered by any of the criteria adopted by the Council". 25/ For individuals such criteria include "losses of income, support, housing or personal property." 26/ In view of the circumstances of the losses and decision 7, the Panel decides that the redundancy payments and reimbursements for the loss of tangible property made by the Claimants pursuant to their contractual obligations should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

B. Business transaction or course of dealing

69. The Democratic People's Republic of Korea alleges that a Kuwait City automobile dealer has refused to return the deposit made by the Claimant on a new car prior to Iraq's invasion and occupation of Kuwait. The transaction, as described by the Claimant, shows that, prior to Iraq's invasion and occupation of Kuwait, the automobile dealer undertook an obligation to either deliver a car to the Claimant or return its deposit.

70. While the Panel notes that the invasion and occupation of Kuwait might have given rise to a hardship or force majeure situation that may have excused the automobile dealer from his duty to deliver the new car, the event would not, under principles of international commercial contract law, excuse him from his alternative obligation to return the Claimant's deposit. 27/ Accordingly, the Panel does not consider the automobile dealer's refusal to return the Claimant's deposit to constitute a direct loss within the meaning of paragraph 16 of resolution 687 (1991). Although the Claimant may have a claim against the automobile dealer, this Commission is not the proper forum for its adjudication.

C. Real property

71. Both Hungarian Claimants and Nigeria seek compensation for the cost of repairing physical damage to their embassy buildings in Kuwait City. Hungary also claims compensation for damage caused to its embassy in Baghdad. The Governing Council has provided that compensatory payments are available for the "loss of or damage to property of a Government". 28/ Accordingly, the Panel decides that damage to embassy property in Iraq and Kuwait should be compensated.

72. The Claimants allege that they discovered the damage to their buildings when their diplomats returned to Baghdad and Kuwait City after the Gulf War ended. They do not proffer any evidence showing who actually caused the damage. Addressing this issue, the Governing Council stated that property that was lost due to the "breakdown of civil order in Kuwait or Iraq" from the period of 2 August 1990 until 2 March 1991 29/ or "because it had been left unguarded ... due to the situation in Iraq and Kuwait" 30/ may be considered as resulting directly from the invasion and occupation.

73. In light of Governing Council decisions 7 and 9 and, given the fact that the Claimants' diplomats, having been evacuated, were unable to protect their real property in Iraq or Kuwait from damage during the invasion and occupation of Kuwait, the Panel considers the causal link between the losses and Iraq's invasion and occupation to have been established in these Claims. Accordingly, the Panel decides that the repair costs incurred by the Claimants should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

74. Denmark alleges that, prior to Iraq's invasion of Kuwait, it prepaid the rent on its embassy premises for the period covering the occupation. The Claimant seeks compensation for the amount of rent it prepaid because it was unable to use the embassy during the period of occupation. The Panel finds that the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation. 31/ In any event, here, the Claimant would have incurred the rental expense regardless of whether Iraq invaded and occupied Kuwait. Consequently, the Panel does not consider the rent the Claimant prepaid for its embassy in Kuwait City to constitute a direct loss within the meaning of paragraph 16 of resolution 687 (1991).

75. In its review of the Claims seeking compensation for the loss of real property, the Panel determined that one of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. The Hungarian Ministry of Foreign Affairs Claim relates to the cost of repairing its "security systems in Kuwait and Baghdad". The Claimant states that it does not "attach relevant bills or inventory to [its] claim due to security reasons. At the same time [it] declare[s] hereby that [its] claim is fair and reasonable." In view of the failure to submit any evidence, however limited, in support of this loss, the Panel cannot recommend compensation for the portion of this Claim relating to the security systems.

D. Tangible property

76. Denmark asserts that Iraqi military personnel burgled its embassy on two specific dates during the occupation of Kuwait, stealing office equipment, furniture and a car. As provided in paragraph 34 of decision 7, the Governing Council considered losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation" to be direct losses. Consequently, the Panel decides that Denmark should be compensated for its loss of tangible property resulting from burglary by Iraqi military personnel to the extent the loss is adequately supported by documentary or other appropriate evidence.

77. The Democratic People's Republic of Korea and the Hungarian Ministry of International Economic Relations claim that office equipment and furniture was damaged or looted from their diplomatic missions in Kuwait during the occupation. New Zealand maintains that an embassy car in Kuwait was lost during this period. Each of these Claimants only discovered the losses following the liberation of Kuwait. For the reasons given with respect to the loss of real property in paragraphs 71 to 73 above, the Panel decides that the Claimants should be compensated for their loss of tangible property to the extent such losses are adequately supported by documentary or other appropriate evidence.

78. The Democratic People's Republic of Korea and Nigeria both evacuated their citizens from Kuwait City to Baghdad by car. The Democratic People's

Republic of Korea states that its cars were confiscated by Iraqi officials. The Claimant's allegations are supported by affidavits from Chinese diplomats who witnessed the event. Accordingly, the Panel decides that the Claimant's loss of its cars should be compensated to the extent that it is adequately supported by documentary or other appropriate evidence.

79. Following the liberation of Kuwait, Nigeria was able to retrieve several of the cars that it had left in Iraq. The Claimant seeks compensation for the cost of this activity. In decision 9, paragraph 6, the Governing Council recognized that claimants are under a duty to mitigate damages and has instructed the panels not to compensate losses that "could reasonably have been avoided". 32/ It therefore follows that reasonable expenses incurred by claimants in mitigating damages arising out of Iraq's invasion and occupation of Kuwait should be compensable. 33/ In this case, the Panel decides that Nigeria's retrieval of its cars from Baghdad constituted a reasonable step taken in mitigation of its tangible property losses. Accordingly, the Claimant should be compensated for expenses incurred in the process to the extent that they are adequately supported by documentary or other appropriate evidence.

80. In its review of the Claims seeking compensation for the loss of tangible property, the Panel determined that portions of some of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. First, as one portion of its Claim, Denmark seeks compensation for a car that belonged to its embassy in Kuwait City. The Panel found that the allegations contained in the statement of claim relating to the car did not meet the Commission's particularity requirement for stating a loss. Moreover, the Panel found that the Claimant did not submit appropriate evidence in support of its alleged loss. Accordingly, the Panel cannot recommend compensation for the portion of this Claim relating to the loss of the embassy's car.

81. Second, the Democratic People's Republic of Korea claims in the tangible loss portion of its Claim that its trade office in Kuwait City was robbed by unidentified men the day before it was closed. But the Panel found that, like Denmark's Claim discussed above, the Claimant's statement of claim did not meet the Commission's particularity requirement nor was it supported by any evidence. Accordingly, the Panel cannot recommend compensation for the portion of this Claim relating to the robbery of the trade office.

E. Bank accounts and securities

82. New Zealand claims that, following Iraq's invasion of Kuwait, it was unable to access funds in its bank account in Kuwait. On 15 October 1991, Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") informed the Commission that Kuwait had made "accounts freely available to all holders of bank accounts in Kuwait ... [thus] there will be no need for such persons to file a claim through the U.N. Process." Accordingly, at the Panel's request, on 21

April 1997, the secretariat communicated this information, in writing, to the Claimant through its Permanent Representative in Geneva. 34/

F. Payment or relief to others

83. Germany seeks compensation for assistance payments made in several cases that were handled by one of its social assistance agencies and which it alleges arose out of the Gulf War. One of the cases for which the Claimant seeks compensation involved the payment of assistance from 11 November 1992 to 28 February 1994 to an Iraqi citizen who was granted political asylum in Germany in 1992. In reviewing this case, the Panel notes that relief payments were only initiated by the Claimant in November of 1992, over eight months after the liberation of Kuwait. In the "C" Report it was determined that:

> "[I]n principle, events giving rise to claimants' losses should have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's activities associated with the invasion and occupation of Kuwait. The occurrence of loss, such as serious personal injury or death, outside that time-frame imposes, in general, an extra burden on a claimant to provide an explanation as to why such loss occurring outside this time-period should be considered a direct result of Iraq's invasion and occupation of Kuwait." 35/

84. Given the time at which the payments were made, the Panel determines that the Claimant has not provided an adequate explanation as to why its payment should be considered a direct result of Iraq's invasion and occupation of Kuwait. Moreover, the Panel recognizes that the Governing Council in decision 1, paragraph 17, stated that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". The Panel is concerned that compensation should not be awarded indirectly through a Government to persons who would not be eligible to seek compensation from the Commission for the loss in their own capacity. Based on the foregoing, the Panel cannot recommend that compensation be awarded with respect to the payments made by the Claimant in this case.

85. Another case involved the provision of "general support" to a German family that was given assistance in Germany largely after the liberation of Kuwait. The Panel is of the view that payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq or their inability to return to those countries during the period of 2 August 1990 to 2 March 1991 are directly related to Iraq's invasion and occupation of Kuwait. 36/ On the other hand, discretionary payments for ongoing ordinary living expenses that are incurred after a person has left the region and taken up a new residence should not normally be considered to be direct consequences of the invasion and occupation of Kuwait. 37/ Accordingly, the Panel decides that ongoing assistance payments such as those made in this case should not be compensated.

86. Two of the cases for which Germany seeks compensation involved the provision of relief during the period of the occupation to students who were cut off from their sources of support in Kuwait and were unable to return home. Another case involved the payment of DM 500 to a Kuwaiti tourist who was stranded at the Köln airport due to Iraq's invasion of Kuwait. The Panel determines that these payments involved the provision of temporary and extraordinary living expenses to persons cut off from their means of support in Kuwait and unable to return as a direct result of Iraq's invasion and occupation of that country. The Panel notes, however, that the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed an individual claim in category "C". For example, in the "C" Report, income loss claims were limited to seven times a claimant's monthly salary. 18/ For these reasons, the maximum period for which the Panel would consider recommending compensation for temporary relief payments made by a Government to a person whose source of support in Kuwait or Iraq was cutoff is seven months. Accordingly, the Panel decides that temporary and extraordinary assistance payments such as those made in these three cases should be compensated to the extent that they are adequately supported by documentary or other appropriate evidence.

87. Sri Lanka seeks compensation for the KD 368,000 in stolen banknotes obtained through currency exchanges by its Honorary Consul in Jordan from Sri Lankan refugees fleeing Kuwait. As previously noted, the Governing Council considers losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation" to be direct losses. 19/

88. In this case, there is a direct link between the theft and circulation of the Central Bank of Kuwait's dinar banknotes by Iraqi officials and the loss incurred by the Claimant. The evidence also demonstrates that the exchanges were made in small amounts in order to provide the Sri Lankan refugees in Jordan with temporary and extraordinary assistance during their evacuation from the region. Finally, the Claim establishes that the notes were exchanged by the Claimant prior to the announcement by the Central Bank of Kuwait, operating in exile, cancelling the stolen currency series. Therefore, the losses incurred by the Claimant were not reasonably avoidable. Consequently, the Panel decides that the Claimant's loss arising out of its receipt of stolen Kuwaiti dinar banknotes should be compensated to the extent it is adequately supported by documentary or other appropriate evidence.

89. In its review of the Claims seeking compensation for the reimbursement of payment or relief to others, the Panel determined that portions of some Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. First, the Hungarian Ministry of Foreign Affairs claims to have paid relief to staff members of its embassies in Kuwait and Baghdad following their evacuation from those

countries. The statement of claim does not explain any of the circumstances under which the payments were made. The Panel found that this portion of the Claim did not meet the Commission's particularity requirement with respect to its statement of claim and therefore cannot recommend compensation for this portion of the Claim.

90. Second, the Netherlands claims that it instituted a "financial assistance scheme" for its diplomats and dependents who were evacuated from the Middle East or who were unable to return to their duty posts following the invasion. However, the documents submitted by the Claimant in support of this loss, both in its original submission and in its response to the Panel's Procedural Order, were in Dutch and were not accompanied by an English translation as required by article 6 of the Rules. Accordingly, the Panel could not consider the evidence and therefore cannot recommend that compensation be awarded for this alleged loss.

G. Evacuation costs

91. Several Claimants, including the Democratic People's Republic of Korea, Denmark, the Hungarian Ministry of Foreign Affairs, the Netherlands, New Zealand and Nigeria, seek compensation for the costs incurred in evacuating their citizens and other nationals from Kuwait and Iraq following Iraq's invasion and occupation of Kuwait. The Governing Council considered such costs to be a direct loss, provided that they were incurred by "a Government in evacuating its nationals from Iraq or Kuwait." 40/ Consequently, the Panel decides that costs incurred by Governments in evacuating their citizens from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

92. Although the costs incurred by Governments in the evacuation of other nationals, i.e. citizens of countries different from the evacuating Government, from Iraq or Kuwait are not expressly mentioned in decision 7, the Panel understands that the Governing Council intended that such costs also be considered to be direct losses. This understanding is based upon, inter alia, the fact that, after issuing decision 7, the Governing Council approved the "F" Claim Form, which classifies "evacuation costs (of citizens or other nationals)" as a type of loss that may be claimed. Accordingly, the Panel decides that the costs incurred by Governments in evacuating other nationals from Iraq and Kuwait should be compensable on the same basis as those costs incurred by Governments in evacuating their own citizens.

93. Denmark also seeks compensation for the costs incurred in evacuating its citizens (primarily diplomats) from countries other than Iraq and Kuwait. However, only costs incurred in evacuating citizens from "Iraq or Kuwait", and not from other countries, are mentioned as being compensable in decision 7. The Governing Council did, however, consider any "loss suffered as a result of ... [m]ilitary operations or threat of military

action by either side during the period 2 August 1990 to 2 March 1991" to be a "direct loss, damage or injury". 41/

94. The Panel decides that this provision of decision 7 can serve as the basis for claims in respect of evacuation from other countries provided a claimant can establish a direct causal link between its loss and Iraq's invasion and occupation of Kuwait. Such a link can be shown where actual military operations were conducted against a country from which persons were evacuated or where an actual - as opposed to speculative - threat of military action existed against a country from which an evacuation took place. In these circumstances, the Panel agrees with the holding of the "C" Panel, that "a claim based on an incident occurring outside Kuwait or Iraq needs to be more fully substantiated" in order to establish the necessary causal link between the loss and the invasion and occupation of Kuwait. 42/

95. In considering this issue, the Panel, pursuant to article 36(b) of the Rules, requested information from various non-claimant Governments regarding the measures they took with respect to the evacuation of citizens from other Middle Eastern countries during the relevant period. The Panel also requested that the secretariat research the range and use of Iraqi SCUD missiles during the period of Iraq's invasion and occupation of Kuwait and the location of any military actions that were conducted by either side in countries other than Iraq and Kuwait.

96. Based on its investigation, the Panel found that "military operations or [the] threat of military action" were directed against Saudi Arabia and Israel in addition to Kuwait and Iraq. At one point, Iraqi ground forces actually crossed the Saudi Arabian border and engaged the Saudi Arabian and Allied Coalition armed forces in combat. Additionally, Saudi Arabia and Israel were threatened with and subjected to a series of SCUD missile attacks launched by Iraq. Consequently, the Panel decides that the costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait. For these reasons, the Panel decides that the portion of Denmark's Claim which relates to the cost of evacuating citizens from Saudi Arabia and Israel should be compensated to the extent that it is adequately supported by documentary or other appropriate evidence.

97. In its review of the Claims seeking compensation for the reimbursement of evacuation expenses, the Panel determined that a portion of one of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. The Democratic People's Republic of Korea states that it "obtained through [an] unofficial channel" "exit permission" to leave Iraq by paying a fee. The Claimant seeks compensation for the amount it paid for such permission. In decision 7, paragraph 14(c), the Governing Council considered that "any loss suffered as a result of ... [a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the

invasion and occupation" are compensable. However, the Claimant has not made a showing that its loss is covered by this provision of decision 7. For example, the Claimant does not identify the "channel" through which the payment was made nor does it allege that the payment was made under compulsion. Consequently, the Panel cannot recommend that compensation be awarded for this claimed loss.

H. Public service expenditures

98. Nigeria seeks compensation for the cost of operating a temporary embassy in Abu Dhabi following the closure of its embassy in Kuwait City. The Panel considers that, even if Nigeria would not otherwise have opened an embassy in Abu Dhabi, its voluntary and independent decision to operate a diplomatic mission there during the period of the occupation of Kuwait has not resulted in a direct loss within the meaning of paragraph 16 of resolution 687 (1991).

V. OTHER ISSUES

A. Currency exchange rate

99. While several Claimants stated their Claims or incurred losses in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses or Claims expressed in other currencies.

100. Courts or tribunals generally use one of three dates in determining the proper rate of exchange: the date of loss; the date of judgment; or the date of payment in execution of the judgment. 43/ The Panel believes that, according to general principles of international law, applying the currency exchange rate as of the date of the loss is the best method of calculating the rate of exchange for the present Claims. In discussing the application of this method in international practice, the "C" Panel observed that "'[n]ormally the value of a claim is computed in the foreign currency at the time of loss or damage and then converted into the currency of the claimant's country using the rate of exchange available at the time the claim arose'". 44/

101. With respect to the nine Claims that are the subject of this report, the Panel finds that the alleged losses occurred during the period of Iraq's occupation of Kuwait from 2 August 1990 through 2 March 1991. It is impractical for the Panel to attempt to determine with precision the date of each individual loss that underlies the Claims. The Panel has observed, however, that the losses appear to have arisen fairly regularly throughout the period of the occupation. Because the losses occurred over a fixed period of time and consisted of numerous individual costs or property losses, the Panel uses 16 November 1990, the midpoint of the occupation period, as the date of loss for purposes of the application of currency exchange rates. 45/

102. Due to Iraq's invasion and occupation of Kuwait, there was a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation. The Panel, therefore, uses the exchange rate for the Kuwaiti dinar that prevailed immediately before the invasion for this purpose. 46/

B. Interest

103. The Governing Council in decision 16 decided that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". 47/ However, the Governing Council provided in decision 16 that the "methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time [and that] [i]nterest will be paid [only] after the principal amount of the awards". 48/ Accordingly, the only decision that the Panel must make with respect to the issue of interest is the date when the losses alleged in these Claims occurred.

104. For the same reasons that the Panel uses 16 November 1990 as the date of loss for the purpose of calculating currency exchange rates, it determines that the same date should be used for purposes of interest calculation. 49/ In view of the foregoing, the Panel determines that interest be awarded on the Claims as of 16 November 1990.

VI. QUANTIFICATION OF THE CLAIMS

105. As discussed above, the Panel decided that certain loss elements within the Claims should not be compensated either because they failed to meet the Commission's pleading and evidentiary standard or because they failed to meet the directness requirement established in resolution 687 (1991).

106. Concerning the quantification of loss elements that the Panel decided were compensable, the Panel, assisted by the secretariat, undertook a careful examination of the statements of claim and the evidence underlying each Claim. In addition to verifying that the stated losses did occur, the Panel considered the reasonableness of the Claimants' actions and the amounts claimed. For example, in the evacuation context, one Claimant purchased gas masks for its citizens to carry on the overland journey from Kuwait to Jordan. The Panel determined that this expense was reasonable and it was allowed. The same Claimant also submitted invoices for first class air travel for some of its evacuees. The Panel determined that such an expense was unreasonable and only allowed the cost of economy class travel.

107. Furthermore, the Panel was assisted by loss adjusters with experience in handling major catastrophic events at the international level. 50/ Under the Panel's supervision and guidance, the loss adjusters reviewed the information and evidence submitted by the Claimants and, in a number of

cases, advised the Panel regarding the quantification of the Claims. Such advice was generally based on the loss adjusters' comparison of the level and type of evidence submitted by the Claimants with the level and type of evidence that claimants usually are able to produce to justify losses arising out of catastrophic events such as hurricanes or floods in the international insurance context. The experts also discussed general loss adjustment principles such as depreciation and betterment with the Panel in the context of specific Claims. The Panel's use of experts in this manner is consistent with the established practice of the Commission 51/ and other international claims commissions and tribunals. 52/

108. Based upon its review and evaluation of the Claims and the advice of the loss adjusters, the Panel makes the following determinations with regard to the quantification of the Claims, which are summarized by loss classification in the table below. The amounts are stated in United States dollars. These amounts have been rounded to the nearest dollar.

QUANTIFICATION BY LOSS ELEMENT									
Claimant	Contract	Business transaction or course of dealing	Real property	Tangible property	Bank accounts and securities	Payment or relief to others	Evacuation costs	Public service expenditures	Total amount recommended
Democratic People's Republic of Korea		0		48,782			69,968		118,750
Denmark			0	10,151			586,606		596,757
Germany						5,943			5,943
Hungarian Ministry of Foreign Affairs	21,067		17,489			0	92,084		130,639
Hungarian Ministry of International Economic Relations			10,332	15,629					25,961
The Netherlands	103,367					0	1,007		104,374
New Zealand	21,928			10,517	0		28,188		60,633
Nigeria			9,468	12,074			51,949	0	73,491
Sri Lanka						1,103,295			1,103,295
Total									2,220,043

VII. RECOMMENDATIONS

109. Based on the foregoing, the Panel recommends that the following amounts should be paid in compensation for losses incurred by the claimant Governments as a direct result of Iraq's invasion and occupation of Kuwait:

(a) The Democratic People's Republic of Korea for its State Commission of External Economic Affairs: US$118,750;

(b) The Kingdom of Denmark for its Ministry of Foreign Affairs: US$596,757;

(c) The Federal Republic of Germany for the North Rhine-Westphalia Ministry of Employment, Health and Social Affairs: US$5,943;

(d) The Republic of Hungary for its Ministry of Foreign Affairs: US$130,639;

(e) The Republic of Hungary for its Ministry of International Economic Relations: US$25,961;

(f) The Kingdom of the Netherlands for its Ministry of Foreign Affairs: US$104,374;

(g) New Zealand for its Ministry of Foreign Affairs and Trade: US$60,833;

(h) The Federal Republic of Nigeria for the Nigerian Embassy in Kuwait: US$75,491, and

(i) The Democratic Socialist Republic of Sri Lanka for its Ministry of Foreign Affairs: US$1,103,295.

Geneva, 25 September 1997

(Signed) Mr. Bjorn Haug
Chairman

(Signed) Mr. Georges Abi-Saab
Commissioner

(Signed) Mr. Michael J. Bonell
Commissioner

Notes

1/ See Security Council resolution 692 (1991), para. 3.

2/ This report adopts the currency abbreviations contained in Terminology Bulletin No. 343, Currency Units (United Nations Publication, Sales No. A/C/E/F/R/S.91.I.16)(ST/CS/SER.F/343).

3/ "Report submitted by the Executive Secretary to the Governing Council in accordance with article 16 of the Provisional Rules for Claims Procedure (Report No. 15)" (S/AC.26/1996/R.2), and "Report submitted by the Executive Secretary to the Governing Council in accordance with article 16 of the Provisional Rules For Claims Procedure (Report No. 16)" (S/AC.26/1996/R.16).

4/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

5/ The approximate amounts claimed are stated in United States dollars, although many of the Claims were originally stated in other currencies.

6/ Category "C" claims are claims of individuals for damages up to US$100,000. Category "D" claims are claims of individuals for damages above US$100,000.

7/ These requests were directed to Denmark, Germany, Hungary, the Netherlands and Sri Lanka.

8/ As a result of its investigation, the Panel concluded that two of the persons reimbursed by the Netherlands for the loss of personal property, two of the persons given assistance by Germany and two of the Ministry of Foreign Affairs employees who received relief from Hungary had filed claims for the same losses in category "C". This information was confirmed by a review of the claim documents filed by the individual claimants in category "C" and the information contained in the Claimants' responses to the Procedural Orders. Consequently, the Panel cannot recommend that compensation be paid to the Claimants for these losses in the present proceedings.

9/ Governing Council decision 7, "Criteria for additional Categories of Claims" (S/AC.26/1991/7/Rev.1).

10/ Given that there are two Hungarian claims covered by this report, they will be referred to, where necessary, by the full names of the Ministries for whom the Claims were submitted in order to avoid confusion.

11/ Although the Panel has read portions of the Kuwait Central Bank claim as part of its investigations here, that claim is not currently under formal review by the Panel.

12/ See Security Council resolution 686 (1991), fourth paragraph of the preamble. This resolution specifically refers to Security Council resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), 669 (1990), 670 (1990), 674 (1990), 677 (1990) and 678 (1990).

13/ See Security Council resolution 674 (1990), para. 8.

14/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim" (S/AC.26/1996/5/Annex) (the "WBC Claim Report"), para. 67. The Panel found that the Security Council had also acted under Chapter VII when it passed

resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991).

15/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1994/3) (the "'C' Report") p. 9. See also WBC Claim Report, para. 68 (the Panel held that "the issue of Iraq's liability has been resolved by the Security Council" and thus constitutes part of the law applicable before the Commission).

16/ Governing Council decision 7, para. 34.

17/ Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9), para. 11.

18/ See, for example, WBC Claim Report, para. 71.

19/ Governing Council decision 15, "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause" (S/AC.26/1992/15), para. 5.

20/ "United Nations Compensation Commission Claim Form for Governments and International Organizations ('F Form')" (the "'F' Claim Form"), para. 4. Indeed, on 16 October 1992, the Commission's Executive Secretary circulated a letter to the Permanent Representatives of United Nations Member States which restated the pleading and evidentiary standard set forth in the Rules and on the "F" Claim Form (S/AC.26/1992/None No.55).

21/ See also "F" Claim Form, paragraph 4, which specifically instructs claimants as to the evidentiary requirement set forth in article 35 of the Rules.

22/ See, for example, M & M Productions, Inc. v. Iran, Iran-United States Claims Tribunal Reports, (Cambridge, Grotius) ("Iran-U.S. C.T.R."), vol. 6 (1984), p. 125 et seq., at p. 127. (Claim dismissed because "the pleadings and evidence in the case ... fail to establish to the Tribunal's satisfaction any substantive basis for Claimant's claim against Respondent".) Accord Karim-Panahi v. United States of America, Iran-U.S. C.T.R., vol. 28 (1992), p. 225 et seq., at p. 228. (Claim dismissed because "[a]part from generalized allegations of the United States involvement, the Claimant's statements remain so vague and devoid of any supporting evidence as to fail to state a cognizable claim or cause of action".) See also Cyprus Petroleum Ltd. v. Iran, Iran-U.S. C.T.R., vol. 11 (1986), p. 70 et seq., at p. 71. (Claim dismissed because "[n]either in the Statement of Claim nor in subsequent filings does the Claimant detail the substance of its allegations or provide any evidence to support them".)

23/ Compare UNIDROIT Principles of International Commercial Contracts ("UNIDROIT Principles"), art. 7.4.3(3). ("Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.")

24/ In his report to the Security Council regarding the implementation of resolution 687 (1991) and the establishment of the Commission, the Secretary-General proposed that the Commission operate as follows:

> "The Commission is not a court or an arbitral tribunal before which parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity,

evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element."

"Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)" (S/22559) ("Secretary-General's report"), para. 20. This proposal formed part of section II of the Secretary-General's report, which the Governing Council was directed to take into account when implementing the provisions of section E of Security Council resolution 687 (1991). See Security Council resolution 692 (1991), para. 5.

15/ Governing Council decision 7, para. 36.

16/ Governing Council decision 1, "Criteria for Expedited Processing of Claims" (S/AC.26/1991/1), para. 14. See also Marjorie M. Whiteman, Damages in International Law, (Washington, United States Government Printing Office, 1943) ("Whiteman"), vol. 3, p. 1781. (The Commission on Indemnities, constituted after the I-ho T'uan chi yi [referred to in the Whiteman text as the "Boxer Uprising"] in June 1900, "considers that the cases specified below constitute an immediate and direct consequence of the events of 1900 ... [loss of] [f]urniture and private property belonging to the staff of the legations and consulates".) (Quoting the Commissioner of the United States to China.)

17/ See, for example, UNIDROIT Principles, arts. 7.1.7, 7.3.5, 7.3.6 and 7.4.9.

18/ Governing Council decision 7, para. 36. See also Whiteman, op. cit., p. 1781. (The I-ho T'uan chi yi Commission on Indemnities considered that, with respect to Governments, the following losses were direct: "[b]uildings of legations and consulates destroyed or damaged, taking into account new requirements, being an immediate and direct consequence of the above events, inclusive of ... repairs ... Furniture and all property belonging to the Government.'") (Quoting the Commissioner of the United States to China.)

19/ Governing Council decision 7, para. 34(d).

20/ Governing Council decision 9, para. 13. See also Whiteman, op. cit., p. 1780. (In discussing what losses incurred by German nationals were considered to be direct in light of the arbitrator's decision that military action taken by the United States and Great Britain in Samoa was unwarranted, the American and British Commissioners submitted the following in the Commission set up pursuant to the Convention of November 7, 1899: "'[i]t may be admitted that where the occupants of a house were obliged to flee for refuge when the bombardment began, and were unable, from fear of personal injury or other causes, to return to protect their property, and it was looted by the natives in their absence, the damage thus resulting may be said to be approximately caused by the military operations'".) (Quoting "Joint Report No. II of August 12, 1904".)

21/ For example, article 45 of the 1961 Vienna Convention on Diplomatic Relations (United Nations, Treaty Series, vol. 500, p. 95), merely provides that, in the case of a permanent or temporary closure of a diplomatic mission, "the receiving State must, even in the case of armed conflict, respect and protect the premises of the mission, together with its property and archives".

12/ This is a general principle of law. Compare UNIDROIT Principles, art. 7.4.8(1). ("The nonperforming party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.")

13/ Ibid., art. 7.4.8(2). ("The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.") See also, for example, Watkins-Johnson Company and Watkins-Johnson Limited v. Iran, Iran-U.S. C.T.R., vol. 22 (1989), p. 218 et seq., at p. 245, where, having held that the claimant's right to sell equipment in mitigation of its damages was consistent with international law, the Tribunal held that the claimant was "entitled to deduct from the proceeds reasonable expenses incurred in carrying out the sale".

14/ The funds held by the Claimant in its Kuwaiti bank account were denominated in Iraqi dinars as opposed to Kuwaiti dinars. As a result of the severe decline in the value of the Iraqi dinar following Iraq's invasion and occupation of Kuwait, the funds in the Claimant's account were worth far less when it submitted its Claim than they were on the day of the invasion, the date from which the Claimant was presumably unable to obtain access to the account. In its Claim, the Claimant merely sought compensation for the funds in the account, which it alleged was blocked. It did not allege a loss based on the diminution in value of the Iraqi dinars held in the account during the relevant period nor did it demonstrate that such a diminution was a direct result of Iraq's invasion and occupation of Kuwait.

15/ "C" Report, p. 13. Accord "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims)" (S/AC.26/1994/1) (the "'B' Report"), pp. 12-13.

16/ Compare Whiteman, op. cit., pp. 1810-1811. ("In a claim presented to the Government of China arising out of the Szechuan riots in May and June 1895, the United States sought compensation for the "'expenses incidently and necessarily incurred by our missionaries in removing to a place of safety, and while residing there [for six months] through enforced inability to return to their residences, are proper items to be embodied in the claims.' The items were reimbursed.") (Quoting Secretary Olney.)

17/ Compare Whiteman, op. cit., p. 1802. ("In a claim presented by the United States to the United States-German Mixed Claims Commission arising out of the sinking of the Lusitania, the claimant sought compensation because "his living expenses were increased by reason of the fact that [his brother who died in the sinking] no longer shared and divided the expense of a room with him and ... that the burden of supporting, maintaining and educating his sister" now fell solely on him. "Umpire Parker disallowed the claim on the ground that the damages, if any, suffered by [the claimant] were 'too remote in legal contemplation to form the basis of an award.'"). See also pp. 1782-1783. (The I-ho T'uan chi yi Commission on Indemnities considered that with respect to private individuals "travelling expenses other than journeys to the nearest place of safety" should "not be considered an immediate and direct consequence of the events of 1900.") (Quoting the Commissioner of the United States to China.)

18/ "C" Report, pp. 192-93.

19/ Governing Council decision 7, para. 34(c).

20/ Ibid., para. 36.

21/ Ibid., para. 34(a).

42/ "C" Report, p. 13.

43/ See, for example, "C" Report, p. 30.

44/ Ibid., (Citing Richard B. Lillich, International Claims: Postwar British Practice, (Syracuse, Syracuse University Press, 1967), p.127. This method has been applied in cases before the Iran-United States Claims Tribunal. See, for example, Blount Brothers Corporation v. Iran, Iran-U.S. C.T.R., vol. 10 (1986), p. 56 et seq., at p. 78.

45/ Compare WBC Claim Report, para. 66.

46/ See, for example, "C" Report, p. 31. The exchange rates used for 1 August 1990 for the Kuwaiti dinar and 16 November 1990 for the other currencies are the average monthly rates for such currencies as reported in the United Nations Monthly Bulletin of Statistics, vol. XLV, No. 4, April 1991 (ST/ESA/STAT/SER.Q/220). The exchange rate adopted by the Panel for the Kuwaiti dinar will not, however, be applied to the Sri Lankan Ministry of Foreign Affairs Claim. In that Claim, the Claimant alleges that it exchanged Kuwaiti dinars for United States dollars at a 3:1 rate. That rate is less than the rate of 3.46:1 prevailing on 1 August 1990. Thus, the application of the pre-invasion rate to the loss would have resulted in an unjustified windfall for the Claimant.

47/ Governing Council decision 16, "Awards of Interest" (S/AC.26/1992/16), para. 1.

48/ Ibid., paras. 2-3.

49/ See, for example, WBC Claim Report, paras. 229-230.

50/ Article 36 of the Rules states that the panels may request "expert advice, as necessary".

51/ See, for example, WBC Claim Report, paras. 9-10. ("The secretariat also retained the services of an accounting consultant to assist the secretariat and the Panel in reviewing the accounting materials submitted by the Claimant and in drafting the interrogatories ... The accounting consultant also participated as a member of the verification team in the performance of the on-site inspection in Kuwait and in the review of the [Touche Ross] working papers.") See also "B" Report, p. 9. (The secretariat retained the Secretary-General of the International Society of Disaster Medicine to preliminarily examine the claims. Later, the same expert assisted the Category "B" Panel with its review of the claims.) "C" Report, p. 271. (Experts in medicine, psychiatry, labour law and mass litigation assisted the Category "C" Panel with its review of the claims.)

52/ See generally Gillian White, The Use of Experts by International Tribunals, (Syracuse, Syracuse University Press, 1965), p. 143. See also Starrett Housing Corp. v. Iran, Iran-U.S. C.T.R., vol. 16 (1987), p. 112 et seq., at pp. 198-199.